

(a) Sagi caused TPR to reclaim the D & K Note from Mr. Parnes.⁶ Then, on August 31, 2008, Sagi, acting as CEO of TPR, notified himself as the general manager of D & K, that D & K was in default under the D & K Note and declared that unless the entire unpaid principal amount of the D & K Note was paid immediately, TPR would sell, at auction, the 240 shares pledged as collateral. A copy of this purported Notification dated August 31, 2008 is annexed hereto as **Exhibit "S"**. Dalia, who knew that the D & K Note was never intended to be enforced and who previously had sworn to as such, in violation of her fiduciary duties as Trustee, never sought to block Sagi from foreclosing on the D & K Note and selling the TPR shares. Notwithstanding her knowledge and her previous sworn statement, Dalia failed to make any effort to stop Sagi when he engaged in this clear act of self-dealing, even though the Orly Trust had a clear interest in the TPR shares at issue.

(b) Thereafter, Sagi, again acting as CEO of TPR, purported to notify D & K (of which he remained managing partner) that D & K's 240 shares of TPR stock would be auctioned to the highest bidder on February 27, 2009, and that the money received from the sale would be used to reduce the outstanding debt under the D & K Note. A copy of this purported Notification is annexed hereto as **Exhibit "T"**. Sagi purported to notify the interested parties of the sale by publishing notice of the sale in the New York Post in October 2008 and February 2009. At all relevant times, Sagi had Petitioner and Dalia's contact information. Despite this, Petitioner was never informed of the impending sale. At the time that Sagi secretly schemed with the connivance of Dalia to structure the bogus sale, it was clear that the value of the TPR shares was significantly higher than any purported value of the D & K Note (although as previously stated the D & K Note had no value).

⁶ On or about May 25, 2008, Mr. Parnes rescinded, *ab initio*, the assignment of the D & K Note. Petitioner was also not notified of that action.

(c) On February 27, 2009, TPR (still controlled by Sagi) foreclosed on the 240 shares of TPR and "auctioned" the shares (the "TPR Sale"). Not coincidentally, TPR purchased the shares at auction for \$2,200,000, which was substantially less than their estimated value, making no effort to collect on the D & K Note from the Sagi Trust. (See **Exhibit "U"**). The \$2,200,000 proceeds of the TPR Sale were purportedly used to decrease D & K's obligations under the D & K Note. The deficiency under the D & K Note was deliberately manufactured by this sham auction in order to provide Sagi and TPR with a future basis to foreclose upon the Orly Trust's only remaining principal asset, the Orly Trust TRI Shares.

59. TPR and Sagi, with the connivance of Dalia in breach of her fiduciary duty, effectively stripped the Orly Trust of its indirect interest in the TPR shares by improperly foreclosing on the D & K Note and conducting the TPR Sale notwithstanding the fact that the Genger family never intended the D & K Note to be enforced. Notably, this alleged and purported notification process and sham TPR Sale took place without Dalia objecting in any way, taking preventive action of any kind, or notifying Petitioner in any way. In short, Dalia, allowed the sham TPR Sale to transpire, did not notify Petitioner of same and clearly violated her duties as a fiduciary to the Orly Trust and Petitioner, as sole beneficiary by failing to protect the valuable trust asset.

60. The forgoing scheme injured Petitioner and the Orly Trust in a number of ways. The Orly Trust's interest in D & K is now worthless, as it purportedly no longer owns any interest in TPR, while Sagi now has control over the foreclosed TPR shares. The scheme also destroyed Arie and Dalia's tax and estate planning intent that both children have equal shares in the family wealth.

61. Dalia, who knew that the D & K Note was never intended to be enforced, should have immediately sought to block Sagi from foreclosing on the D & K Note and selling

the TPR shares. Certainly, she should have informed Petitioner so Petitioner could make her own efforts to block the sham TPR sale or, at the least, arrange for other bidders to be at the sale. Notwithstanding her knowledge and her previous sworn statement, Dalia failed to make any effort to stop Sagi when he engaged in this clear act of self-dealing, even though the Orly Trust has a clear interest in the TPR shares at issue.

62. As if this was not an egregious enough breach of Dalia's fiduciary duties to the Orly Trust, Dalia has made no effort whatsoever to date to seek any contribution from the Sagi Trust for its share of purported amounts due under the D & K Note (although as previously stated at length herein, no such purported sums are due under the D & K Note because it was never intended to be enforced). In other words, if the D & K Note was truly a "liability" of both Trusts, in theory, TPR should have foreclosed on the Sagi Trust's interests as well. Of course, this will never happen as long as Sagi is still the CEO of TPR (the holder of the D & K Note) and the manager of D & K, (the maker of the D & K Note). By ceding management authority of TPR and D & K to Sagi, Dalia deliberately created Sagi's clear and unequivocal conflict of interest and "paved the road" for his self-dealing. This has resulted in Sagi looting the Orly Trust for his own benefit with the tacit or express approval of Dalia.

63. As a fiduciary of the Orly Trust with prior, as well as continued knowledge, of the TPR foreclosure, Dalia had a duty to protect the Orly Trust's indirect ownership of the TPR shares. Instead of taking proactive measures required of a fiduciary, Dalia did nothing and allowed Sagi to obtain the TPR shares for himself to the detriment of the Orly Trust. Moreover, in connection with her appointment as successor trustee of the Orly Trust in January, 2008, as previously stated above, Dalia purportedly divested herself of her TPR shares for the sum of \$5,000,000 (without informing the Court or Petitioner as to when she transferred her interest) in a further attempt to distance herself from any attributable wrongdoing.

64. Dalia knew of Sagi's plan to foreclose on the D & K Note as early as August, 2008, thus she withheld information from Petitioner concerning the TPR Sale for almost 10 months. Even then, she only provided the information until she received a demand letter from Petitioner's counsel and realized that legal action was imminent.

65. In fact, the notice of the TPR Sale in the New York Post was specifically designed by Dalia and Sagi not to provide Petitioner with notice and an opportunity to object to same. Dalia and Sagi were both aware of Petitioner's address at this time but instead of notifying Petitioner, they chose to deceive her by publishing notice in the newspaper.

66. As a result of the sham TPR Sale, on or about June 9, 2009, Petitioner commenced an action which is pending before the Supreme Court for New York County entitled, Orly Genger et al v. Dalia Genger, Sagi Genger, D & K GP LLC, TPR Investment Associates, Inc. and Leah Fang, Index No. 109749/2009 (the "New York TPR Action"). In the New York TPR Action, Petitioner is seeking, *inter alia*, monetary damages and the return of the TPR shares.⁷

**THE JULY 2009 ORDER AND INJUNCTION AND PETITIONER'S
RENEWED APPLICATION WITH THIS COURT TO REMOVE DALIA AS TRUSTEE**

67. Upon learning of the sham TPR Sale, which stripped the Orly Trust of its indirect interest in its shares of TPR, Petitioner renewed her petition with this Court to remove Dalia as Trustee of the Orly Trust by filing same on or about June 22, 2009. Petitioner also filed a Motion with this Court and sought a temporary restraining order which enjoined and prohibited

⁷ By Decision and Order of the Honorable Paul G. Feinman dated June 28, 2010 in the New York TPR Action, Justice Feinman determined that the Petitioner's claim with respect to Dalia's breach of her fiduciary duty as sole Trustee of the Orly Trust should be decided by the Surrogate's Court. Further, in the same Decision and Order, Justice Feinman denied Dalia's Motion for Summary Judgment and determined that there is a "...question of fact as to whether Dalia Genger acted with intent to commit fraud against plaintiff's trust [the Orly Trust], and to lull plaintiff [Orly] into a false sense of security as to the status of her trust." (See Exhibit "V", Decision and Order of Justice Feinman dated June 28, 2010, Pages "17" and 19")

Dalia, *inter alia*, and anyone acting on her behalf from attempting to sell, transfer, pledge and encumber or take any act with respect to the Orly Trust TRI Shares without providing Petitioner with at least 10 days prior notice. A copy of the June 22, 2009 Petition (without the exhibits attached to it which are duplicative) is annexed hereto as **Exhibit “W”**.

68. As a result of the Petitioner’s forgoing motion for a restraining order, the July 1, 2009 Order was entered pending the outcome of this proceeding and which imposed certain protective restraints (the “Restraints”) upon Dalia as previously set forth above. Dalia declined to attend the hearing.

69. During counsel’s oral argument of Petitioner’s motion for a restraining order, Surrogate Webber noted to Dalia’s counsel that:

“They [Dalia and Sagi] are on notice of all of your fears [with respect to the dissipation of the Orly Trust’s assets]. So for them now to do something which would obviously be against their duties and responsibilities would be somewhat glaring in terms of what the surcharge [to be imposed against Dalia] would be.” (emphasis supplied)
(See excerpt from transcript from July 1, 2009 hearing annexed hereto as **Exhibit “X”**, Page “23”)

70. The Restraints were later confirmed by this Court on August 18, 2009, reconfirmed and supplemented with additional restraints by this Court on July 16, 2010 and made a part of a stipulation between Petitioner and Dalia which was entered on September 8, 2010 (see **Exhibit “Y”**).

71. On or about September 21, 2010, Petitioner filed the Second Amended Verified Petition (the “Second Amended Petition”) to remove Dalia as Trustee. Dalia has filed a Motion to Dismiss the Second Amended Petition and the decision on the Motion to Dismiss still remains *sub judice*.

**THE ADDITIONAL RESTRAINTS PLACED UPON DALIA AND
SAGI BY THE NEW YORK COURTS IN THE NEW YORK TRI ACTION
AND THE NEW YORK TPR ACTION**

72. In addition to the Restraints imposed upon Dalia by the July 2009 Order, on or about July 28, 2010, the Court in the New York TPR Action also restrained Dalia, Sagi and the co-defendants to that action from transferring, selling, pledging, assigning, or otherwise disposing of D & K's 48% ownership interest in TPR. (the "TPR Action Restraints") (See Exhibit "Z" at page "32")

73. The Court in the New York TRI Action also entered certain restraints against Dalia, Sagi and the other co-defendants to that action with respect to the Orly Trust TRI Shares.⁸ (the "TRI Action Restraints") (See Exhibit "AA", December 28, 2011 Order in New York TRI Action, Pages "14" through "15").

**DALIA HAS WILLFULLY AND REPEATEDLY DISOBEYED
THE JULY 2009 ORDER BY ENTERING INTO A FURTHER
SCHEME TO ENCUMBER AND DISSIPATE THE ORLY TRUST'S ASSETS**

74. Petitioner submits that it could not be any more clear to Dalia, her counsel, Sagi and the other co-defendants to the New York TPR Action and the New York TRI Action that Dalia was forbidden from transferring, pledging, encumbering, assigning, selling and/or dissipating any assets of the Orly Trust without prior notice to Petitioner as a result of: (i) the Restraints set forth in the July 1, 2009 Order; (ii) Surrogate Webb's statement to Dalia's counsel on the return date that Dalia and Sagi are on notice of Petitioner's fears that the Orly Trust's assets will be dissipated (and therefore, any actions taken by Dalia against her duties and responsibilities would obviously be "glaring") (See Exhibit "X", Page "23"); (iii) the Stipulation entered into between Petitioner and Orly further confirming the Restraints (See Exhibit "Y";

⁸ Both the New York TRI Action and the New York TPR Action are before Justice Paul Feinman.

and, (iv) the restraints imposed by Justice Feinman in the New York TRI Action and New York TPR Action (collectively, the "Supreme NY Restraints"). All these restraints were specifically and expressly intended to preserve the "status quo" until the Courts rendered a final decision.

75. Notwithstanding the forgoing, rather than honor any of these restraints, subsequent to the Petitioner's filing of the Second Amended Petition, Dalia, Sagi and their cohorts, have continued to conspire together and in secret to render all of these restraints a nullity.

76. Instead of treating this Court's July 2009 Order and the Supreme NY Restraints as Orders to be obeyed and boundaries to be honored, Dalia, Sagi and their cohorts saw them as obstacles to be hurdled. To that end, Dalia, D & K (through D & K GP), and/or TPR (in other words, Dalia and Sagi) secretly executed eight (8) agreements⁹ encumbering the Orly Trust with \$4.44 million in new debt, which the Orly Trust has no hope of paying off.

77. In breach of Dalia's fiduciary duties as Trustee, the Secret Agreements were specifically designed and intended as part of Dalia and Sagi's scheme to encumber the Orly Trust with debt but not to similarly encumber the Sagi Trust with any debt whatsoever.

78. Petitioner discovered the existence of the Secret Agreements on or about July 6, 2012 solely in response to discovery requests made by Petitioner's counsel in the New York TPR Action. These documents were only first produced on or about July 6, 2012 notwithstanding the fact that: (i) the initial Secret Agreements, namely, the \$4,000,000

⁹ These eight secret agreements (collectively, the "Secret Agreements") will be further described immediately below and are: (i) the \$4,000,000 Promissory Note dated October 3, 2011 (See Exhibit "BB"); (ii) the Credit and Forbearance Agreement and Second Amendment and Restatement of Promissory Note executed on May 15, 2012 (See Exhibit "CC"); (iii) the \$4,240,000 Amended and Restated Promissory Note dated May 15, 2012 (See Exhibit "DD"); (iv) the \$200,000 Promissory Note dated May 15, 2012 (See Exhibit "EE"); (v) the Agreement Amending Terms of Promissory Note dated March, 2012 (See Exhibit "FF"); (vi) the purported TPR Settlement Agreement dated October 3, 2011 (See Exhibit "GG"); (vii) the purported Amended and Restated TPR Settlement Agreement dated March 16, 2012 (See Exhibit "HH"); and, (viii) the Bill of Sale and Note Assignment dated May 15, 2012 (See Exhibit "II").

Promissory Note and the TPR Settlement Agreement were both executed approximately nine (9) months earlier on October 3, 2011; (ii) the July 2009 Order expressly required that Dalia provide Petitioner with prior notice of any and all acts which would affect the Orly Trust TRI Shares; and, (iii) the Supreme NY Restraining Orders expressly required that Dalia provide prior notice of any and all acts which would affect the Orly Trust's respective interests in the Orly Trust TRI Shares and TPR.

THE 2011 PROMISSORY NOTE

79. Unbeknownst to Petitioner, on October 3, 2011, Dalia and TPR purported to cancel the \$4,500,000 deficiency remaining on the D & K Note after the disputed TPR Sale and replace it with a \$4,000,000 promissory note that directly obligated the Orly Trust to pay TPR (the "2011 Promissory Note"). (See Exhibit "BB", copy of 2011 Promissory Note and the TPR Settlement Agreement (defined below), Exhibit "GG").

80. By so doing, Dalia wrongly attempted to: (i) transfer \$4 million dollars of liability from D & K to the Orly Trust (See Exhibit "GG", TPR Settlement Agreement at 5); (ii) replace the unenforceable D & K Note with a putatively enforceable one (id.); (iii) acknowledge the legality of the sham TPR Sale and the resulting deficiency (id. at 2-3); and, (iv) ensure that this \$4 million dollar liability would not fall within the release that was part of the purported TPR Settlement Agreement reached that same day between Dalia, Sagi and the other defendants to the New York TPR Action, but would continue to burden the Orly Trust (id. at 5).

81. The 2011 Promissory Note was payable to TPR the earlier of: (a) November 1, 2012; or, (b) the receipt of any proceeds from the sale of the Orly Trust TRI Shares, "notwithstanding anything to the contrary herein or in the parties' accompanying [TPR] Settlement Agreement". See Exhibit "BB" at 1.

82. By executing the 2011 Promissory Note on behalf of the Orly Trust, Dalia (i) obligated the Orly Trust to pay all of TPR's legal fees (See Exhibit "BB" at 2); (ii) made her removal as Trustee an "Event of Default" making the 2011 Promissory Note immediately due and payable (*id.* at 1, emphasis added); and, (iii) agreed to the law and jurisdiction of the State of Delaware (*id.* at 2)¹⁰

THE 200K PROMISSORY NOTE AND THE CREDIT AGREEMENT

83. In May, 2012, TPR assigned the 2011 Promissory Note to MSCo, a St. Kitts entity. In exchange for an alleged \$400,000 received from MSCo, Dalia had the Orly Trust sign another promissory note for \$200,000 (the "200K Note") (See Exhibit "EE") and increased the 2011 Promissory Note to \$4,240,000.¹¹ (See Exhibit "CC", Credit and Forbearance Agreement and Second Amendment and Restatement of Promissory Note (the "Credit Agreement") and Exhibit "EE", (the 200K Note).

84. Further, Dalia, purporting to act as Trustee wrongfully attempted to: (i) waive any defenses the Orly Trust would have to payment, including any defenses with respect to MSCo., TPR, or any prior holder of the 2011 Promissory Note (See Exhibit "CC", Credit Agreement, §6.1(c)); (ii) have the Orly Trust broadly indemnify MSCo., should Orly or any future Trustee legally attack the 2011 Promissory Note, the Amended Promissory Note, or the Credit Agreement (*id.*, §7); (iii) make the Orly Trust liable for all costs of collection, including attorneys' fees (See Exhibit "DD", Amended and Restated Promissory Note (the "Amended 2011 Note") § 6); (iv) make Dalia's replacement as the Orly Trust Trustee an "Event of

¹⁰ In March, 2012, unbeknownst to Petitioner, TPR, D & K and the Orly Trust (i.e. Dalia and Sagi) purported to enter into an "Agreement Amending Terms of Promissory Note" to provide for New York law and jurisdiction in any competent court (See Exhibit "FF"). This Agreement also gave Dalia and Sagi the power to amend the 2011 Promissory Note at will.

¹¹ In other words, Dalia pledged \$440,000 of Orly Trust assets in exchange for a purported \$400,000.

Default" making the Amended 2011 Note and the 200K Note (jointly, the "Notes") immediately due and payable (See Exhibit "CC", Credit Agreement, § 6.2, emphasis added); (v) agree to pay the 200K Note from the sale of the Orly Trust TRI Shares "notwithstanding anything to the contrary" (Exhibit "EE", 200K Note, §1.3); and, (vi) make the Credit Agreement and Notes fully assignable without the consent of, or notice to, the Orly Trust (See Exhibit "CC", Credit Agreement, § 10).

THE PURPORTED SETTLEMENT AND AMENDED SETTLEMENT

85. On October 3, 2011, Dalia (supposedly on behalf of the Orly Trust), TPR and D & K (by Sagi Genger) purported to settle the New York TPR Action.

86. Petitioner and her counsel in the New York TPR Action were not informed of this purported settlement nor was Petitioner consulted in any way regarding its terms.

87. In violation of the July 2009 Order, the Supreme NY Restraints, Surrogate Webb's admonishment to Dalia concerning the dissipation of the Orly Trust's Assets, and the Stipulation entered into between Petitioner and Dalia, the purported settlement agreement (the "TPR Settlement Agreement", which incorporates the 2011 Promissory Note by reference) purports to have the Orly Trust transfer all its interests in D & K and disclaim all interest in TPR. The settlement agreement also has TPR relinquish its claims to the Orly Trust TRI Shares:

(a) TPR hereby relinquishes in favor of the OG Trust [the Orly Trust] any economic interest in the TRI Shares [the Orly Trust TRI Shares] and assigns to the OG Trust its right to any economic benefits of the TRI Shares including any proceeds from the sale thereof, including but not limited to the \$10.3 million in proceeds otherwise owing to TPR in the future pursuant to the terms of the August 22, 2008 letter agreement; (b) the OG Trust - irrespective of any claim made or asserted on its behalf by Orly Genger - hereby transfers to TPR its limited partnership interest in DK (the "DK Interest"), and disclaims any interest in, any shares of or TPR, either directly

or indirectly through DK (the "TPR Interest");... and (c) TPR agrees to pay \$100,000 for the legal fees of the OG Trust.¹²
(See Exhibit "GG", TPR Settlement Agreement, Paragraph "1")

88. On March 16, 2012, Dalia (supposedly on behalf of the Orly Trust), TPR, and D & K GP (by Sagi Genger) entered into a purported Amended and Restated Settlement Agreement (the "Amended TPR Settlement Agreement"). Once again, Petitioner was not informed or consulted in any way. The purported "settlement" was restated, and then amended to purportedly cancel and void "the (i) the Amended and Restated Limited Partnership Agreement of D&K Limited Partnership dated as of October 30, 2004 and signed November 22, 2007, and/or (ii) the Meeting of Partners of D&K L.P. January 31, 2009 and Agreement." See Exhibit "HH", March 16, 2012 Amended TPR Settlement Agreement, Paragraph "1").

89. Importantly, though the Amended TPR Settlement Agreement purported to void these two agreements *ab initio*, the purported settlement did nothing to reverse or unwind the sham TPR Sale that these two agreements purported to enable, or to cancel the supposed deficiency resulting from the TPR Sale.¹³

90. Demonstrably, these various actions and agreements (agreed to in secret and never revealed to the Court or Petitioner despite numerous Court appearances, filings and outstanding documents requests) in the New York TPR Action and New York TRI Action violated the protective restraints imposed by this Court and the other New York Courts in a

¹² Dalia, Sagi, TPR, and D & K also purported to require the Orly Trust to pay D & K and TPR's attorneys' fees, should Petitioner continue to advance claims on the Orly Trust's behalf (see Exhibit "GG", Paragraph "8") and purported to release one another from all claims, causes of action, lawsuits, demands, liability of any kind, asserted or unasserted, known or unknown, suspected or unsuspected, direct or derivative, in connection with the 1993 Note [D & K Note], the [Orly Trust] TRI Shares, the Share Transfer, the DK Interest, the TPR Interest, the 2008 Letter Agreement, or any other matters, through the date of the Agreement id. at Paragraph "4")

¹³ The parties also made sure that the Release in the TPR Settlement Agreement did not cover anyone on Sagi and Dalia's "enemies list" (See Exhibit "HH", Amended TPR Settlement Agreement, Paragraph "3"), changed the governing law to New York law (id. at Paragraph "6"), and made their agreement to Delaware jurisdiction non-exclusive (id.).

number of independent ways. As to the TPR Settlement Agreement and the Amended TPR Settlement Agreement:

- (a) Pursuant to the July 2009 Order, Dalia and her counsel were required to give Petitioner 10 days advance notice of any transaction that impacted the Orly Trust TRI Shares, but failed to provide notice of either the TPR Settlement Agreement or the Amended TPR Settlement Agreement;
- (b) By agreeing in the TPR Settlement Agreement and the Amended TPR Settlement Agreement to have the Orly Trust relinquish its interest in TPR and transfer its interest in D & K to TPR, Dalia, Sagi, D & K GP, and TPR jointly and severally violated the TPR Action Restraints which forbade each of them from "transferring, pledging, assigning or otherwise disposing of the [Orly Trust TPR] Shares." (See Exhibit "Z" at 31-32)

91. As to the Notes and the Credit Agreement, TPR's assignment of the 2011 Promissory Note to MSCo was an "...act by Respondent, her agents and all other persons acting on her behalf to assign, mortgage, pledge, redeem, encumber, sell or otherwise alter the Orly Trust's interest in TRI..." Accordingly, pursuant to the July 2009 Order, Dalia was required to give Petitioner at least 10 days notice of the transaction but completely failed to do so. This failure to notify Petitioner also violated various provisions of the Supreme NY Restraining Orders.

**THE EVENT OF DEFAULT UNDER THE NOTES HAS BEEN TRIGGERED
AS A RESULT OF THE DISMISSAL OF DALIA'S COUNSEL'S
FEDERAL INTERPLEADER ACTION**

92. As a result of Dalia, TPR, D & K (through D & K GP) (i.e, Dalia and Sagi's) actions, the \$4.44 million dollars in new debt to MSCo is immediately due and payable because of one of the poison pills that litter the Secret Agreements (in addition to the one that provides an event of default if Dalia is removed as Trustee of the Orly Trust) has already been triggered¹⁴, and thus, MSCo is able to immediately proceed against the Orly Trust's assets in any

¹⁴The resolution of an interpleader action commenced by Dalia's counsel, Pedowitz & Meister LLP ("Pedowitz & Meister") is a triggering Event of Default under the Secret Agreements. Pedowitz & Meister was the

jurisdiction in the world (Delaware, St. Kitts, etc.) without notice or warning to the Orly Trust or to anyone.

93. Thus, by her actions Dalia has created a situation where the assets of the Orly Trust could be in immediate peril of dissipation.

DALIA NEEDS TO BE REMOVED AS TRUSTEE IMMEDIATELY

94. As a result of all of Dalia's forgoing actions and inactions described in this Third Amended Verified Petition, her breach of her fiduciary duties to Petitioner as beneficiary of the Orly Trust, her violation of the terms and conditions of this Court's July 2009 Order and the Supreme NY Restraints, her ongoing conspiracy and scheme with Sagi to loot, transfer, pledge, encumber and dissipate the Orly Trust's assets and the immediate peril to those assets, Petitioner submits that Dalia's should be immediately removed as Trustee of the Orly Trust.

**JOEL ISAACSON SHOULD BE APPOINTED AS
SUCCESSOR TRUSTEE**

95. As a result of Dalia's forgoing actions and inactions described in this Third Amended Verified Petition, her breach of her fiduciary duties to Petitioner as beneficiary

Escrow Agent with respect to the proceeds of the disputed sale of the Orly Trust TRI Shares and commenced an interpleader action against Petitioner, Dalia as Trustee of the Orly Trust and other parties in the United States District Court for the Southern District of New York, Pedowitz & Meister LLP v. TPR Investment Associates, Inc. Orly Genger, et al (Case No. 11 Civ. 5602) (the "Pedowitz & Meister Interpleader Action") whereby it sought, *inter alia*, a judgment from the Court determining who was entitled to the proceeds of the disputed sale of the Orly Trust TRI Shares. Petitioner's counsel moved to dismiss the Pedowitz & Meister Interpleader Action on the grounds, *inter alia*, that the District Court lacked subject matter jurisdiction and in any event, all the parties and claims involved in the Pedowitz & Meister Interpleader Action were already pending before Justice Feinman in the New York TRI Action. The Pedowitz & Meister Interpleader Action was recently dismissed by Judge John F. Keenan in the United States District for the Southern District of New York by Opinion and Order dated June 14, 2012, due to lack of subject matter jurisdiction and described by him as a "sham". See Case No.'s 08 Civ. 7140 (JFK), 11 Civ. 5602 (JFK), et al), Docket No. 64). Thus, the resolution of this sham action has triggered an Event of Default under the Secret Agreements. It is worth noting that Pedowitz & Meister represents both Dalia in her individual capacity and as Trustee of the Orly Trust.

of the Orly Trust and her violation of the terms and conditions of this Court's July 2009 Order, Dalia should be immediately removed as Trustee and replaced with Joel Isaacson.

96. Mr. Isaacson is the founder and CEO of Joel Isaacson & Co. LLC, which has been a leading independent wealth management firm in New York City for almost 20 years, and which is located at 546 Fifth Avenue, 20th Floor, New York, NY 10036. Mr. Isaacson specializes in financial services and tax planning and has acted as trustee for more than 100 trusts. He holds a Bachelors of Science Degree in accounting and a Masters of Business Administration degree in financial planning. Mr. Isaacson is not acquainted with any members of the Genger family, does not have any interest in TRI, TPR or D & K, is willing and prepared to succeed Dalia as Trustee immediately and has an understanding of the current status of the Orly Trust.

WHEREFORE, respectfully requests that an Order be entered: (i) immediately removing Dalia Genger as Trustee of the Orly Trust; (ii) suspending the Letters of Appointment heretofore issued to Dalia; (iii) appointing Joel Isaacson as successor trustee; and, (iv) granting such other and further relief as this Court deems to be just equitable and proper.

Dated: New York, New York
October 15, 2012


ORLY GENGGER

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

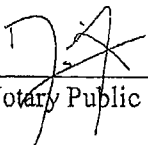
ORLY GINGER, the petitioner named in the foregoing Third Amended Verified
Petition, being duly sworn, deposes and says:

1. I am the Petitioner in this matter.
2. I have read the annexed Third Amended Verified Petition, know the contents thereof and the same are true to my knowledge, except those matters thereon which are stated to be alleged upon information and belief, and as to those matters I believe them to be true.



ORLY GINGER

Sworn to before me this
15th day of October, 2012



Notary Public

Daniel B Fix
Notary Public State of New York
New York County, LIC# 02F16239452
Comm Exp 04/18/2015

Exhibit C

3/23/2015 Genger -v- Genger Proceeding 032315

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2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 12

3

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4

ORLY GENDER,

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Plaintiff

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INDEX NUMBER:

100697/08

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-against-

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SAGI GENDER,

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Defendant

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80 Centre Street

12

New York, New York 10013

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March 23, 2015

14

BEFORE:

HONORABLE: Barbara Jaffe, JSC

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16

APPEARANCES:

17

Zeichner Ellman & Krause, LLP

18

Attorneys for Plaintiff

19

1211 Avenue of the Americas

20

New York, New York 10036

21

By: Bryan D. Leinbach, Esq.

22

-and-

23

Kasowitz Benson Torres & Friedman, LLP

24

1633 Broadway

25

New York, New York 10019

26

By: Eric D. Herschmann, Esq.

27

Michael Paul Bowen, Esq.

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Morgan, Lewis & Bockius, LLP

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Attorneys for the Defendant

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New York, New York 10178-0060

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By: John Dellaportas, Esq.

33

Mary Pennisi, Esq.

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35

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Delores Hilliard

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Vicki K. Glover

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Official Court Reporters

39

- OFFICIAL COURT REPORTER

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 accounting firm?

3 A Yes.

4 Q What was the reason that you obtained a different
5 accounting firm?

6 A Well, around this time in 2007, I was trying to get
7 information about my finances from my brother. He did not want
8 to deal with Bill Fischer and told me that, you know, if I
9 wanted to have any conversations with him about it, I'd have
10 to --

11 Q I think you have to slow down.

12 A Sorry.

13 If I wanted to have any conversations with him
14 about my finances, I would have to work with an accountant that
15 was a new accountant, someone who was independent. So I hired a
16 new accountant.

17 Q Who did you hire?

18 A Joel Isaacson.

19 Q Did Joel Isaacson have anything to do with Raines &
20 Fischer?

21 A No.

22 Q Did Joel Isaacson & Associates have anything to do with
23 your father?

24 A No.

25 Q How did you come to hire Joel Isaacson?

26 A A friend of mine referred me to them.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And a friend that was independent of Raines & Fischer
3 or your parents?

4 A Yes.

5 Q And after you hired Joel Isaacson & Company, then what
6 happened regarding your finances?

7 A They started trying to help me gather information, and
8 I know they contacted Sagi and tried to get information from
9 him. We tried to set up a meeting, and we finally were able to
10 set up a meeting with Sagi.

11 Q Do you recall, approximately, when you were able to set
12 up that meeting with your brother?

13 A I believe it was in November of 2007.

14 Q Do you recall whether or not your brother had sent
15 information to your new accountants Isaacson & Associates prior
16 to your having a meeting together with your brother?

17 A No, I know that he didn't.

18 Q Now, as far as the actual time period of the meeting,
19 do you recall how that actually got set or what transpired?

20 A How the meeting transpired?

21 Q Yes.

22 A Well, as I said, I was trying to get information from
23 my brother. I hired these new accountants, Joel Isaacson, and I
24 knew that my brother had all this information, and we contacted
25 him several times to try to set it up, and we finally --

26 Q I think you have to slow down.

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2 A We finally were able to set up a meeting.

3 Q Let me show you what's been marked as Exhibit 234 for
4 identification, and it's been previously discussed in this
5 matter.

6 (Handing to defense counsel.)

7 MR. HERSCHMANN: I'm providing a copy again to
8 defense counsel.

9 (Handing to witness.)

10 (Handing to the Court.)

11 Q I'm going to hand you an exhibit, what's been
12 previously marked as Exhibit 228 for identification, which is
13 Bates stamped JI 429. I'm providing again a copy to defense
14 counsel.

15 (Handing to defense counsel.)

16 (Handing to witness.)

17 Q Will you take a look at Exhibit 228 as well?

18 (Handing to the Court.)

19 Q I'm going to hand you also what's been marked as
20 266-135 as well. I'm providing a copy to defense counsel.

21 (Handing to defense counsel.)

22 (Handing to witness.)

23 Q Let me start with Exhibit 266-135.

24 (Handing to the Court.)

25 Q Do you see that this is an e-mail from Stan Altmark to
26 your brother?

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2 A Yes.

3 Q And you've seen this e-mail before today, correct?

4 A Yes.

5 Q Now, looking at the e-mail, does it refresh your
6 recollection as to whether or not you had requested via Isaacson
7 & Company certain information in June of 2007 from your brother?

8 A Yes, I did.

9 Q And is it accurate that after making requests from your
10 brother in June of 2007, you had not received specific
11 information that you wanted prior to meeting with him?

12 A Yes.

13 Q Now, looking at Exhibit 228, if you could, for a
14 moment, have you seen Exhibit 228 previously?

15 A Yes.

16 Q And do you recognize this as an e-mail from Joel
17 Isaacson to your brother dated November 6th of 2007?

18 A Yes.

19 MR. HERSCHMANN: Your Honor, at this time I would
20 offer Exhibit 228 for identification into evidence.

21 MR. DELLAPORTAS: Objection. Hearsay.

22 MR. HERSCHMANN: Your Honor, we're offering it as
23 a communication that was sent as a representative from Orly
24 Genger to her brother. The actual content is irrelevant,
25 except for the fact that he actually received it.

26 MR. DELLAPORTAS: It's definitely being offered

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1 O. Genger - Plaintiff - Direct/Herschmann
2 for the truth of the matter, and it's hearsay, and it
3 hasn't been authenticated. It's from Joel Isaacson's
4 files.

5 THE COURT: Yeah, sustained.

6 Q Well, Ms. Genger, looking at Exhibit 228, do you recall
7 whether or not your brother was advised that Isaacson & Company
8 had no affiliation with Raines & Fischer?

9 A Yes.

10 Q And did you believe at the time Isaacson & Company was
11 making requests from your brother for certain documents, that
12 you were actually entitled to those documents?

13 A Yes.

14 Q Did you retain Isaacson & Company to help advise you on
15 the state of affair of your assets?

16 A Yes.

17 Q Who was the accountant handling the tax returns for
18 White Box in the 2007 time period? Was it Jonas Gayer, to your
19 knowledge, or was it Raines & Fischer, if you recall?

20 A Raines & Fischer.

21 Q Now, can you look at Exhibit 234, please? Do you have
22 the exhibit in front of you?

23 A Yes.

24 Q And you mentioned earlier that there was an agenda that
25 was put together for the November 8th, 2007 meeting.

26 Does this exhibit refresh your recollection as to

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2 what was covered during the course of the meeting, as far as
3 your side was concerned?

4 MR. DELLAPORTAS: Objection. There's been no
5 testimony that she lacks recollection subject that it needs
6 to be refreshed.

7 Q Do you recall everything that happened at the November
8 8, 2007 meeting?

9 A I don't know if I recall everything, but I --

10 Q Is there a document that would help refresh your
11 recollection as to what was the agenda covered at the November
12 8, 2007 meeting?

13 A Yes.

14 Q Is the actual agenda the document that would help you
15 refresh your recollection?

16 A Yes.

17 Q So, now looking at Exhibit 234, does that refresh your
18 recollection as to what was expected to be covered by your
19 representatives with your brother on November 8, 2007?

20 A Yes.

21 Q So, can you first tell us how long did it take for you,
22 for your representatives, to arrange a meeting with your brother
23 to discuss your finances? Was it a week? Was it more than
24 that? And if the prior documents that I've handed you, Exhibit
25 266-135, refresh your recollection, please let us know.

26 MR. DELLAPORTAS: It's kind of leading.

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2 THE COURT: You're putting the cart before the
3 horse.

4 MR. HERSCHMANN: Okay. Well, let me ask it.

5 Q Do you recall how long it took you to set up a meeting
6 with your brother?

7 A I know it was months.

8 Q Now, can you describe for us the general tenure of the
9 meeting; where it occurred, if you recall, what happened when
10 you got there?

11 A The meeting happened at Joel Isaacson's office, and the
12 people who were there who attended the meeting were Joel
13 Isaacson, Stan Altmark, Don Mullen, my mother, myself and my
14 brother. And the tenure was, I was trying to get information,
15 which is in this agenda. I had a lot of questions that I wanted
16 answered.

17 Q I want you to leave the agenda aside. If you can give
18 us the general -- was it in a conference room? What happened?

19 A It was in one of the conference rooms at Isaacson's
20 office.

21 Q And was Don Mullen the person who referred you to
22 Isaacson & Company?

23 A Yes, he was.

24 Q Now, just tell us generally what happened, and then
25 we'll cover the specifics in the course of the meeting.

26 A Generally, what happened was, all these people were

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1 O. Genger - Plaintiff - Direct/Herschmann
2 sitting in a room together. Joel Isaacson and Stan Altmark were
3 asking certain questions of Sagi. Sagi was not happy with the
4 fact that we were asking questions. He did most of the talking.
5 Stan or Joel would ask him a question and he would give a
6 five-minute speech on something and run -- I mean, just run
7 circles around everyone. He was not really answering questions.
8 And we were getting nowhere. And he became very upset by the
9 fact that we were asking him questions.

10 (Continued on next page.)
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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q And did you attempt to go through the agenda that is
3 contained in exhibit 234?

4 A Yes, we did.

5 Q Now, was the meeting to discuss your getting access to
6 financial information and to take control of your financial
7 life?

8 A Yes.

9 Q Was that expressed to your brother?

10 A Yes.

11 Q Did you address in anything -- well, withdrawn.

12 Do you recall specifically what you addressed regarding
13 your 1993 trust?

14 Just a foundational question that I have to ask before
15 I present the exhibit.

16 Do you recall specifically what was addressed?

17 A Without looking at it?

18 Q Without looking at it?

19 A Okay. I mean, generally, I know.

20 Q Would the agenda refresh your recollection as to
21 specifically what you were asking about your trust?

22 A Yes.

23 MR. HERSCHMANN: I would offer it in as a past
24 recollection refreshed and make the process easier or I can
25 do it this way.

26 THE COURT: Mr. Dellaportas, what do you say?

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2 MR. DELLAPORTAS: This agenda, do you mean?

3 THE COURT: Yes.

4 MR. DELLAPORTAS: It is hearsay.

5 MR. HERSCHMANN: Well, the past recollection
6 recorded, the present recollection refreshed.

7 THE COURT: I don't know that she recorded it.

8 MR. HERSCHMANN: She doesn't have to have recorded
9 it. She has to be able to articulate that this was an
10 accurate document of what was discussed at the meeting. She
11 doesn't have to be the actual person who sat down and
12 recorded it.

13 THE COURT: Is that your understanding, Mr.
14 Dellaportas?

15 MR. DELLAPORTAS: No.

16 THE COURT: I'm not sure either.

17 MR. HERSCHMANN: We can pull it up.

18 THE COURT: Just to refresh my own recollection.
19 Who has The Richardson?

20 MR. HERSCHMANN: I don't have it. And I think the
21 rule, and I can articulate it this way, if your secretary
22 sat there and took copious notes of the entire process and
23 said this accurately reflects what happened at the
24 meeting --

25 THE COURT: We don't know when it was prepared. I
26 don't know. Let's just get the rule.

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2 MR. HERSCHMANN: Okay.

3 (Short pause)

4 MR. DELLAPORTAS: There is a Judge Friedman's
5 section on it. It says, under the past recollection
6 recorded doctrine the memoranda of a fact known for an event
7 offered in the past for which the witness lacks sufficient
8 present recollection may be received in evidence to the
9 witness' oral testimony.

10 THE COURT: It doesn't say anything about having to
11 be prepared by the witness.

12 MR. DELLAPORTAS: There is a whole section in here.

13 THE COURT: I don't know, Mr. Herschmann.

14 MR. HERSCHMANN: If you want testimony, take a
15 moment, we can look at it. I have no problem.

16 But, I'm pretty confident the rule is exactly as
17 Mr. Dellaportas just read it.

18 It is not necessary that the witness be the one
19 that actually recorded it as much as they can say that
20 recording is accurate.

21 THE COURT: I'm pleased that you're confident. I
22 am not.

23 It didn't say anything about it, but that doesn't
24 mean --

25 MR. DELLAPORTAS: As I understand it this is the
26 agenda prepared before the meeting and thus isn't --

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2 THE COURT: That is what I mean, also. It is not
3 contemporaneous.

4 MR. DELLAPORTAS: It is not notes from the meeting.
5 It is agenda in advance of the meeting.

6 MR. HERSCHMANN: Your Honor, the rule is as I
7 understand it, and Mr. Dellaportas if he wants to share that
8 with us and we can take a 5 minute recess.

9 THE COURT: I can go in the back and look at it.

10 MR. HERSCHMANN: If you would do that, your Honor,
11 that would be great.

12 Thank you, very much.

13 (Short recess; time is now 2:42 PM)

14 (2:45 PM)

15 THE COURT: I don't think so, Mr. Herschmann. Not
16 according to Richardson under the old book, which I'm sure
17 hasn't been changed too much, 66213, I don't know what it is
18 in the next edition. But, while the memorandum, any
19 memorandum made by anybody can be used to refresh, if you
20 want it in evidence when a witness has so far forgotten
21 facts that he cannot recall them even after looking at a
22 memorandum of them and he testified that he once knew them
23 and made a memorandum of them at the time or soon after,
24 which he intended to make correctly and which he believes to
25 be correct, such memorandum in his own handwriting may be
26 received as evidence of the facts contained although the

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 witness has no present recollection of them.

3 MR. HERSCHMANN: Your Honor, I think that's why I
4 raised the issue of past recollection refreshed or present
5 recollection recorded.

6 As I said, there are two ways to address. I can
7 address it with the witness as present recollection
8 refreshed, which is the process that the witness looks at
9 it.

10 THE COURT: Right. Then, this doesn't come into
11 evidence. But, you want it in evidence.

12 MR. HERSCHMANN: That's correct.

13 The reason I had it the way I did is that there are
14 two ways of dealing with it.

15 There is what I call the simpler process.

16 THE COURT: It is not coming into evidence.

17 MR. HERSCHMANN: Okay.

18 THE COURT: She can use it to refresh her
19 recollection if it indeed refreshes her recollection.

20 As I recall this whole exercise is because you
21 wanted to offer it into evidence.

22 MR. HERSCHMANN: That's correct. And the reason
23 doesn't matters.

24 THE COURT: Okay.

25 Q So, Ms. Genger, let me, I'm going to walk you through
26 the process.

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2 I'm going to ask you specific questions. If you recall
3 something specifically you should answer it. If you don't
4 recall specifically, then I'm going to ask you is there
5 something that would refresh your recollection. And the process
6 is then you can look at it and then say the document refreshes
7 my recollection and then answer it. Okay?

8 So, I'm going to go back to the November 8, 2007
9 meeting.

10 And do you recall specifically what was discussed in
11 the first topic dealing with Orly Genger 1993 Trust?

12 A Specifically, no.

13 Q Would the agenda refresh your recollection as to what
14 was discussed?

15 A Yes.

16 Q Can you take a moment to look at the agenda and tell us
17 after looking at it does it refresh your recollection as to what
18 was the first topic discussed as it related to the Orly Genger
19 1993 Trust?

20 A Yes.

21 Q Okay. What was of the first topic discussed?

22 A D&K.

23 Q And what was discussed after D&K was raised?

24 A Who was the general partner. Did Sagi have a copy of
25 the partnership agreement, the note.

26 Then, there is a topic of the note, who owns the note.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q When you say who is the general partner do you recall
3 the specific discussions as to percentages about your mother and
4 whether she remained the general partner, without looking at
5 document first?

6 A No.

7 Q If you look at the document does that refresh your
8 recollection?

9 A Yes.

10 Q And what was the first thing that was discussed after
11 you asked who were the general partners of D&K?

12 MR. DELLAPORTAS: I object on relevance grounds as
13 to this line of testimony.

14 MR. HERSCHMANN: I'm doing this as a general
15 proposition as to the subject matters that were discussed.

16 I can offer the agenda in and make it simple and go
17 through it or I can only do it this way, your Honor. That
18 is why I raised it in the first place.

19 I'm not saying it is proof. I'll do it any way Mr.
20 Dellaportas prefers.

21 THE COURT: He doesn't prefer anything. It is not
22 depending upon what he prefers. It is what you want to
23 prove.

24 He says it is not relevant.

25 Why is it relevant?

26 Q Well, did you generally discuss your trust and

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 associations with the D&K note?

3 A Yes.

4 Q Okay. After discussing your trust and the D&K note did
5 you then have discussions about TPR?

6 A Yes.

7 Q Okay. Do you recall specifically about what was
8 discussed in relationship to TPR and what percentages were not
9 owned by D&K, first, without looking at the document?

10 A No.

11 Q Looking at the document, does it refresh your
12 recollection as to what was the first thing you discussed about
13 TPR?

14 A Yes.

15 Q And what was that ?

16 A Who owns and what percentages the 49 percent not owned
17 by D&K.

18 Q And do you recall whether there was any discussion
19 about Rochell, R-O-C-H-E-L-L, Fang and your mother's interest?

20 A Yes.

21 Q After that did you have a discussion about whether or
22 not you can get copies of the minutes of meetings from TPR?

23 A Yes.

24 Q Did your brother agree to give you copies of the
25 minutes of meetings with TPR?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Did you then discuss with your brother what is the
3 distribution he was receiving from TPR?

4 MR. DELLAPORTAS: Objection. Relevance.

5 THE COURT: Overruled.

6 A Yes.

7 Q Okay. And do you recall raising the amount of his
8 getting \$45,000 per month?

9 A Yes.

10 Q And did your brother ever answer as to why he was
11 getting \$45,000 from TPR per month and how it was being
12 categorized?

13 MR. DELLAPORTAS: Objection, compound.

14 THE COURT: Let's take it one at a time.

15 Q Okay. Did your brother ascribe for you why he was
16 receiving \$45,000 per month?

17 A He may have and I don't remember.

18 His answers were long winded. So, I just don't
19 remember them.

20 Q Was there a discussion about why your mother was
21 receiving \$30,000 per month?

22 MR. DELLAPORTAS: Objection, lack of foundation.

23 THE COURT: Yes. Sustained.

24 Q Well, do you recall a discussion about what
25 distributions your mother was getting from TPR?

26 A Generally, yes.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Looking at the exhibit, does it refresh your
3 recollection as to what dollar amount your brother was being
4 questioned about regarding how much money your mother was
5 receiving?

6 A Yes.

7 Q What number did you question your brother about?

8 A \$30,000 a month.

9 Q Per month?

10 A Yes.

11 Q Do you recall then discussing with your brother how
12 could distributions be evened out between you, your mother and
13 your brother?

14 A Yes.

15 Q Did your brother at that time indicate his willingness
16 to even out the distribution between you, and your mother and
17 himself?

18 A No, he didn't.

19 Q Did your brother answer any questions about what are
20 the assets of TPR?

21 A Whatever answers he gave were so complicated and he
22 gave answers that confused everyone.

23 Q Well, did the Isaacson representatives say to your
24 brother during the course of the meeting that they were
25 satisfied with his answers?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q What did they say generally about the answers your
3 brother was giving?

4 MR. DELLAPORTAS: Objection. Hearsay.

5 THE COURT: Sustained.

6 Q Did you then cover what receivables were due TPR, just
7 generally?

8 A I don't remember.

9 Q Okay. If you look at exhibit 234, the agenda in front
10 of you, does that refresh your recollection as to what questions
11 were asked about the receivables due TPR?

12 A Yes.

13 Q And looking at that , does it refresh your recollection
14 about asking what happened to the \$1.9 million that your brother
15 owed TPR?

16 MR. DELLAPORTAS: Objection. Lack of foundation
17 and leading.

18 THE COURT: How about a foundation?

19 Q Okay. Well, does exhibit 234 refresh your recollection
20 as to whether the subject matters of how much money your brother
21 owed TPR was discussed on November 8, 2007?

22 A Yes.

23 Q Okay. Looking at exhibit 234 does it refresh your
24 recollection about the specific amount of money that was
25 discussed with your brother regarding how much money he owed
26 TPR?

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2 A Yes.

3 Q What was the amount of money that your brother was
4 asked about that he owed TPR?

5 MR. DELLAPORTAS: Just objection, your Honor.

6 This doesn't feel like a refreshed recollection.
7 It just feels like reading a document.

8 MR. HERSCHMANN: It's the only way to do it.

9 If Mr. Dellaportas wants me to go down --

10 THE COURT: You know, she was there. So, I do
11 believe there is a --

12 MR. DELLAPORTAS: Okay.

13 Q What is the amount?

14 A \$1.9 million.

15 Q Do you recall then having other discussions about other
16 monies that were owed TPR or owed by other officers to TPR?

17 A Yes.

18 Q Do you recall what was next discussed independent of
19 looking at the exhibit?

20 A No.

21 Q Looking at the exhibit, does it refresh your
22 recollection as to the next item that you discussed with your
23 brother?

24 A Yes.

25 Q Okay. What was the next item that you discussed with
26 your brother?

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2 A The annual expense of TPR and then after that there was
3 trust administration.

4 Q I think you have to speak a little louder.

5 A Sorry.

6 Right after that there was what are the annual expenses
7 of TPR exclusive of above distributions to Sagi and Ariel Orly.

8 Q Did your brother answer what was the annual expense to
9 TPR when Isaacson & Company posed the question to him?

10 A Again, his answers were really convoluted and --

11 Q How about, was there a discussion about the amount of
12 lawsuits that TPR was involved with as either a plaintiff or a
13 defendant?

14 A Were there discussions?

15 Q Yes?

16 A Yes.

17 Q After that was there a discussion about potentially
18 buying out your interests?

19 A Yes.

20 Q And looking at exhibit 234 does it refresh your
21 recollection, specifically, about what you asked of your
22 brother?

23 A Yes.

24 Q What was asked?

25 A Was TPR, meaning Sagi, consider buying out Orly's
26 interest in TPR. -- Or D&K now giving proper discounts to the

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 D&K note and credit for the losses.

3 THE COURT: Well --

4 MR. HERSCHMANN: Those were the subject matters
5 that were discussed.

6 THE COURT: She is reading from it, though.

7 Q Now --

8 THE COURT: You're kind of abusing it now. She
9 cannot read from it.

10 Q All right.

11 So, the document is not in evidence, so you cannot read
12 from it. You can only look at it to refresh your recollection
13 and then answer the question. So.

14 THE COURT: And if you cannot answer the question,
15 then you cannot answer the question.

16 Q Now, was there a discussion about capital contributions
17 made to White Box?

18 A Yes.

19 Q After that do you recall what was discussed about TPR
20 and its relationship to White Box?

21 A Yes.

22 Q And do you recall at some point asking could you have
23 control of the tax filings of White Box?

24 A Yes.

25 Q Now, did you then move on to discuss your trustees and
26 administration of your trust?

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2 A Yes.

3 Q Who were the trustees back in 2007?

4 A It was Lea Fang.

5 Q Did you discuss wanting someone else to become the
6 trustee of your trust?

7 A Yes.

8 MR. DELLAPORTAS: Objection, relevance.

9 THE COURT: Sustained.

10 Q In the course of this meeting was the agenda dealing
11 with your parents' divorce?

12 A No.

13 Q If you look at the agenda does it refresh your
14 recollection as to whether or not you had raised TRI or had
15 intended to raise TRI in any way?

16 A Does it refresh?

17 Q Yes?

18 A Yes, it does.

19 Q And is TRI something that was on your agenda to cover?

20 A No.

21 Q Now, did you then cover the Canadian ventures?

22 A Yes.

23 Q And do you recall, approximately, when you learned
24 about Riverside related entities?

25 A It was some time prior in '07, prior to this meeting.

26 Q And when you say some time prior to '07, was that in

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 relationship with your trying to get a better understanding of
3 finances?

4 A Yes.

5 Q And prior to having this meeting in November of 2007
6 had you met personally with Isaacson and Company
7 representatives?

8 A Before this meeting?

9 Q Yes?

10 A Yes.

11 Q If you go now to the issues, let's focus now on the
12 Canadian ventures.

13 Do you recall specifically what you first or what was
14 first asked of your brother in the November 8, 2007 meeting
15 regarding the Canadian ventures?

16 A Without -- Without looking at it? No.

17 Q Okay. Looking at exhibit 234 can you tell us if that
18 refreshes your recollection as to what was, what was the first
19 thing that you discussed in relationship to the Canadian
20 ventures?

21 A Yes.

22 Q What was the first thing that was discussed?

23 THE COURT: Without reading from this.

24 Q Without reading?

25 A What did I sell to my brother?

26 Q Was that a question that the representatives of

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 Isaacson & Company asked your brother even in November of 2007?

3 MR. DELLAPORTAS: Objection, hearsay.

4 THE COURT: Sustained.

5 Q How did your brother respond to the question of what
6 you had sold to him?

7 A To that particular question, I don't remember what his
8 response was.

9 Q Without looking at the agenda do you recall what was
10 discussed in connection with your brother about it?

11 THE COURT: About?

12 Q About the Canadian ventures?

13 THE COURT: Okay the Canadian ventures.

14 Q Yes?

15 A I mean, I have a specific --

16 Q Tell us what you recall being discussed about the
17 Canadian ventures, of the transfer. And then we can get into
18 the specifics. Tell us generally first what you recall?

19 A About the Canadian ventures what was discussed?

20 Q Yes?

21 A Specifically, I specifically asked my brother if we
22 could now transfer back my shares to me like he said he would
23 do. And I specifically remember my brother looking at me and
24 laughing and said, I don't know why you would want to do that,
25 it is valueless.

26 Q Did you believe him when he said that?

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2 A Did I believe what, that it was valueless?

3 Q Yes?

4 A What I believed is that, is that my brother tricked me.

5 Q And after that conversation did you still try to get
6 more information about the Canadian ventures from your brother
7 in that meeting?

8 A I don't remember what happened specifically right after
9 that. I know there was other, there was more conversation about
10 it. But, I cannot tell you specifically.

11 Q Looking at exhibit 234 did you have a discussion to
12 refresh your recollection specifically about the dollar values?

13 A Yes.

14 Q Okay. And does exhibit 234 refresh your recollection?

15 A Yes.

16 Q And what do you recall about discussing with your
17 brother in that meeting dealing with the valuations?

18 A That I had, I had sold my interest to him for 100,000
19 when I bought it for 150.

20 Q And then do you recall any discussions about the
21 valuations of the businesses currently?

22 A I am sorry, what was the question?

23 Q Could we read it back, please?

24 THE COURT: Yes, please.

25 (Record read)

26 Q I meant, generally. I mean the Canadian business?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Did your brother in the course of that meeting provide
4 you with any financial information as to where the money had
5 gone from the Canadian ventures?

6 A No.

7 Q Let me show you what you has been marked as exhibit
8 266-71, which is admitted into evidence.

9 And do you see on the bottom portion of the exhibit
10 266-71 that there is a reference that the White Paper -- I am
11 sorry, that the White Box papers were supposed to transfer to
12 Jonah from Bill Fischer and then Jonah can be reached at (212)
13 758-0000.

14 Do you see that ?

15 A Yes.

16 Q Does that refresh your recollection as to who were the
17 accountants for White Box in 2007?

18 A Yes.

19 Q Is that Jonah Gayer and Associates?

20 A I mean, it was supposed to be, it wasn't.

21 Q Do you know at some point whether Gayer and Associates
22 became the accountants for White Box? And I'm focused on the
23 2007 time period.

24 A I don't know that it ever actually switched to Jonah
25 Gayer.

26 Q Now, going back to the meeting in November, 2007, do

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 you recall that at the conclusion of the agenda there was an
3 over all subject matter that you wanted to address with your
4 brother?

5 A Yes.

6 (Continued on the next page)

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1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And what was the general tenure for what you were
3 looking to get from your brother in the November 2007 meeting?

4 A Information. Information about my finances.

5 Q And did you get information that was satisfactory to
6 you from your brother in that meeting?

7 A No.

8 Q Let me show you what's been previously received in
9 evidence as Exhibit 230.

10 MR. HERSCHMANN: Again, I'm providing an extra
11 copy to defense counsel.

12 (Handing to defense counsel.)

13 (Handing to witness.)

14 (Handing to the Court.)

15 Q Do you recall that after the meeting Isaacson &
16 Associates sent a letter to your brother?

17 THE COURT: Yeah, this is very leading.

18 MR. HERSCHMANN: I'm sorry?

19 THE COURT: Ask a question.

20 MR. HERSCHMANN: I'm trying to lay a foundation
21 for the exhibit.

22 THE COURT: It's too leading.

23 Q First, have you seen Exhibit 230 beforehand?

24 A Yes.

25 Q Did you have discussions with Isaacson & Associates
26 before Exhibit 230 was sent to your brother?

Exhibit C

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 12

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-----X

ORLY GENDER,

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Plaintiff

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INDEX NUMBER:

100697/08

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-against-

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SAGI GENDER,

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Defendant

-----X

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80 Centre Street

New York, New York 10013

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March 23, 2015

11

BEFORE:

HONORABLE: Barbara Jaffe, JSC

12

13

APPEARANCES:

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26

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1 O. Genger - Plaintiff - Direct/Herschmann

2 accounting firm?

3 A Yes.

4 Q What was the reason that you obtained a different
5 accounting firm?

6 A Well, around this time in 2007, I was trying to get
7 information about my finances from my brother. He did not want
8 to deal with Bill Fischer and told me that, you know, if I
9 wanted to have any conversations with him about it, I'd have
10 to --

11 Q I think you have to slow down.

12 A Sorry.

13 If I wanted to have any conversations with him
14 about my finances, I would have to work with an accountant that
15 was a new accountant, someone who was independent. So I hired a
16 new accountant.

17 Q Who did you hire?

18 A Joel Isaacson.

19 Q Did Joel Isaacson have anything to do with Raines &
20 Fischer?

21 A No.

22 Q Did Joel Isaacson & Associates have anything to do with
23 your father?

24 A No.

25 Q How did you come to hire Joel Isaacson?

26 A A friend of mine referred me to them.

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1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And a friend that was independent of Raines & Fischer
3 or your parents?

4 A Yes.

5 Q And after you hired Joel Isaacson & Company, then what
6 happened regarding your finances?

7 A They started trying to help me gather information, and
8 I know they contacted Sagi and tried to get information from
9 him. We tried to set up a meeting, and we finally were able to
10 set up a meeting with Sagi.

11 Q Do you recall, approximately, when you were able to set
12 up that meeting with your brother?

13 A I believe it was in November of 2007.

14 Q Do you recall whether or not your brother had sent
15 information to your new accountants Isaacson & Associates prior
16 to your having a meeting together with your brother?

17 A No, I know that he didn't.

18 Q Now, as far as the actual time period of the meeting,
19 do you recall how that actually got set or what transpired?

20 A How the meeting transpired?

21 Q Yes.

22 A Well, as I said, I was trying to get information from
23 my brother. I hired these new accountants, Joel Isaacson, and I
24 knew that my brother had all this information, and we contacted
25 him several times to try to set it up, and we finally --

26 Q I think you have to slow down.

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1 O. Genger - Plaintiff - Direct/Herschmann

2 A We finally were able to set up a meeting.

3 Q Let me show you what's been marked as Exhibit 234 for
4 identification, and it's been previously discussed in this
5 matter.

6 (Handing to defense counsel.)

7 MR. HERSCHMANN: I'm providing a copy again to
8 defense counsel.

9 (Handing to witness.)

10 (Handing to the Court.)

11 Q I'm going to hand you an exhibit, what's been
12 previously marked as Exhibit 228 for identification, which is
13 Bates stamped JI 429. I'm providing again a copy to defense
14 counsel.

15 (Handing to defense counsel.)

16 (Handing to witness.)

17 Q Will you take a look at Exhibit 228 as well?

18 (Handing to the Court.)

19 Q I'm going to hand you also what's been marked as
20 266-135 as well. I'm providing a copy to defense counsel.

21 (Handing to defense counsel.)

22 (Handing to witness.)

23 Q Let me start with Exhibit 266-135.

24 (Handing to the Court.)

25 Q Do you see that this is an e-mail from Stan Altmark to
26 your brother?

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1 O. Genger - Plaintiff - Direct/Herschmann

2 A Yes.

3 Q And you've seen this e-mail before today, correct?

4 A Yes.

5 Q Now, looking at the e-mail, does it refresh your
6 recollection as to whether or not you had requested via Isaacson
7 & Company certain information in June of 2007 from your brother?

8 A Yes, I did.

9 Q And is it accurate that after making requests from your
10 brother in June of 2007, you had not received specific
11 information that you wanted prior to meeting with him?

12 A Yes.

13 Q Now, looking at Exhibit 228, if you could, for a
14 moment, have you seen Exhibit 228 previously?

15 A Yes.

16 Q And do you recognize this as an e-mail from Joel
17 Isaacson to your brother dated November 6th of 2007?

18 A Yes.

19 MR. HERSCHMANN: Your Honor, at this time I would
20 offer Exhibit 228 for identification into evidence.

21 MR. DELLAPORTAS: Objection. Hearsay.

22 MR. HERSCHMANN: Your Honor, we're offering it as
23 a communication that was sent as a representative from Orly
24 Genger to her brother. The actual content is irrelevant,
25 except for the fact that he actually received it.

26 MR. DELLAPORTAS: It's definitely being offered

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1 O. Genger - Plaintiff - Direct/Herschmann
2 for the truth of the matter, and it's hearsay, and it
3 hasn't been authenticated. It's from Joel Isaacson's
4 files.

5 THE COURT: Yeah, sustained.

6 Q Well, Ms. Genger, looking at Exhibit 228, do you recall
7 whether or not your brother was advised that Isaacson & Company
8 had no affiliation with Raines & Fischer?

9 A Yes.

10 Q And did you believe at the time Isaacson & Company was
11 making requests from your brother for certain documents, that
12 you were actually entitled to those documents?

13 A Yes.

14 Q Did you retain Isaacson & Company to help advise you on
15 the state of affair of your assets?

16 A Yes.

17 Q Who was the accountant handling the tax returns for
18 White Box in the 2007 time period? Was it Jonas Gayer, to your
19 knowledge, or was it Raines & Fischer, if you recall?

20 A Raines & Fischer.

21 Q Now, can you look at Exhibit 234, please? Do you have
22 the exhibit in front of you?

23 A Yes.

24 Q And you mentioned earlier that there was an agenda that
25 was put together for the November 8th, 2007 meeting.

26 Does this exhibit refresh your recollection as to

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1 O. Genger - Plaintiff - Direct/Herschmann
2 what was covered during the course of the meeting, as far as
3 your side was concerned?

4 MR. DELLAPORTAS: Objection. There's been no
5 testimony that she lacks recollection subject that it needs
6 to be refreshed.

7 Q Do you recall everything that happened at the November
8 8, 2007 meeting?

9 A I don't know if I recall everything, but I --

10 Q Is there a document that would help refresh your
11 recollection as to what was the agenda covered at the November
12 8, 2007 meeting?

13 A Yes.

14 Q Is the actual agenda the document that would help you
15 refresh your recollection?

16 A Yes.

17 Q So, now looking at Exhibit 234, does that refresh your
18 recollection as to what was expected to be covered by your
19 representatives with your brother on November 8, 2007?

20 A Yes.

21 Q So, can you first tell us how long did it take for you,
22 for your representatives, to arrange a meeting with your brother
23 to discuss your finances? Was it a week? Was it more than
24 that? And if the prior documents that I've handed you, Exhibit
25 266-135, refresh your recollection, please let us know.

26 MR. DELLAPORTAS: It's kind of leading.

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1 O. Genger - Plaintiff - Direct/Herschmann

2 THE COURT: You're putting the cart before the
3 horse.

4 MR. HERSCHMANN: Okay. Well, let me ask it.

5 Q Do you recall how long it took you to set up a meeting
6 with your brother?

7 A I know it was months.

8 Q Now, can you describe for us the general tenure of the
9 meeting; where it occurred, if you recall, what happened when
10 you got there?

11 A The meeting happened at Joel Isaacson's office, and the
12 people who were there who attended the meeting were Joel
13 Isaacson, Stan Altmark, Don Mullen, my mother, myself and my
14 brother. And the tenure was, I was trying to get information,
15 which is in this agenda. I had a lot of questions that I wanted
16 answered.

17 Q I want you to leave the agenda aside. If you can give
18 us the general -- was it in a conference room? What happened?

19 A It was in one of the conference rooms at Isaacson's
20 office.

21 Q And was Don Mullen the person who referred you to
22 Isaacson & Company?

23 A Yes, he was.

24 Q Now, just tell us generally what happened, and then
25 we'll cover the specifics in the course of the meeting.

26 A Generally, what happened was, all these people were

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1 O. Genger - Plaintiff - Direct/Herschmann
2 sitting in a room together. Joel Isaacson and Stan Altmark were
3 asking certain questions of Sagi. Sagi was not happy with the
4 fact that we were asking questions. He did most of the talking.
5 Stan or Joel would ask him a question and he would give a
6 five-minute speech on something and run -- I mean, just run
7 circles around everyone. He was not really answering questions.
8 And we were getting nowhere. And he became very upset by the
9 fact that we were asking him questions.

10 (Continued on next page.)

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q And did you attempt to go through the agenda that is
3 contained in exhibit 234?

4 A Yes, we did.

5 Q Now, was the meeting to discuss your getting access to
6 financial information and to take control of your financial
7 life?

8 A Yes.

9 Q Was that expressed to your brother?

10 A Yes.

11 Q Did you address in anything -- well, withdrawn.

12 Do you recall specifically what you addressed regarding
13 your 1993 trust?

14 Just a foundational question that I have to ask before
15 I present the exhibit.

16 Do you recall specifically what was addressed?

17 A Without looking at it?

18 Q Without looking at it?

19 A Okay. I mean, generally, I know.

20 Q Would the agenda refresh your recollection as to
21 specifically what you were asking about your trust?

22 A Yes.

23 MR. HERSCHMANN: I would offer it in as a past
24 recollection refreshed and make the process easier or I can
25 do it this way.

26 THE COURT: Mr. Dellaportas, what do you say?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 MR. DELLAPORTAS: This agenda, do you mean?

3 THE COURT: Yes.

4 MR. DELLAPORTAS: It is hearsay.

5 MR. HERSCHMANN: Well, the past recollection
6 recorded, the present recollection refreshed.

7 THE COURT: I don't know that she recorded it.

8 MR. HERSCHMANN: She doesn't have to have recorded
9 it. She has to be able to articulate that this was an
10 accurate document of what was discussed at the meeting. She
11 doesn't have to be the actual person who sat down and
12 recorded it.

13 THE COURT: Is that your understanding, Mr.
14 Dellaportas?

15 MR. DELLAPORTAS: No.

16 THE COURT: I'm not sure either.

17 MR. HERSCHMANN: We can pull it up.

18 THE COURT: Just to refresh my own recollection.
19 Who has The Richardson?

20 MR. HERSCHMANN: I don't have it. And I think the
21 rule, and I can articulate it this way, if your secretary
22 sat there and took copious notes of the entire process and
23 said this accurately reflects what happened at the
24 meeting --

25 THE COURT: We don't know when it was prepared. I
26 don't know. Let's just get the rule.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 MR. HERSCHMANN: Okay.

3 (Short pause)

4 MR. DELLAPORTAS: There is a Judge Friedman's
5 section on it. It says, under the past recollection
6 recorded doctrine the memoranda of a fact known for an event
7 offered in the past for which the witness lacks sufficient
8 present recollection may be received in evidence to the
9 witness' oral testimony.

10 THE COURT: It doesn't say anything about having to
11 be prepared by the witness.

12 MR. DELLAPORTAS: There is a whole section in here.

13 THE COURT: I don't know, Mr. Herschmann.

14 MR. HERSCHMANN: If you want testimony, take a
15 moment, we can look at it. I have no problem.

16 But, I'm pretty confident the rule is exactly as
17 Mr. Dellaportas just read it.

18 It is not necessary that the witness be the one
19 that actually recorded it as much as they can say that
20 recording is accurate.

21 THE COURT: I'm pleased that you're confident. I
22 am not.

23 It didn't say anything about it, but that doesn't
24 mean --

25 MR. DELLAPORTAS: As I understand it this is the
26 agenda prepared before the meeting and thus isn't --

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 THE COURT: That is what I mean, also. It is not
3 contemporaneous.

4 MR. DELLAPORTAS: It is not notes from the meeting.
5 It is agenda in advance of the meeting.

6 MR. HERSCHMANN: Your Honor, the rule is as I
7 understand it, and Mr. Dellaportas if he wants to share that
8 with us and we can take a 5 minute recess.

9 THE COURT: I can go in the back and look at it.

10 MR. HERSCHMANN: If you would do that, your Honor,
11 that would be great.

12 Thank you, very much.

13 (Short recess; time is now 2:42 PM)

14 (2:45 PM)

15 THE COURT: I don't think so, Mr. Herschmann. Not
16 according to Richardson under the old book, which I'm sure
17 hasn't been changed too much, 66213, I don't know what it is
18 in the next edition. But, while the memorandum, any
19 memorandum made by anybody can be used to refresh, if you
20 want it in evidence when a witness has so far forgotten
21 facts that he cannot recall them even after looking at a
22 memorandum of them and he testified that he once knew them
23 and made a memorandum of them at the time or soon after,
24 which he intended to make correctly and which he believes to
25 be correct, such memorandum in his own handwriting may be
26 received as evidence of the facts contained although the

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 witness has no present recollection of them.

3 MR. HERSCHMANN: Your Honor, I think that's why I
4 raised the issue of past recollection refreshed or present
5 recollection recorded.

6 As I said, there are two ways to address. I can
7 address it with the witness as present recollection
8 refreshed, which is the process that the witness looks at
9 it.

10 THE COURT: Right. Then, this doesn't come into
11 evidence. But, you want it in evidence.

12 MR. HERSCHMANN: That's correct.

13 The reason I had it the way I did is that there are
14 two ways of dealing with it.

15 There is what I call the simpler process.

16 THE COURT: It is not coming into evidence.

17 MR. HERSCHMANN: Okay.

18 THE COURT: She can use it to refresh her
19 recollection if it indeed refreshes her recollection.

20 As I recall this whole exercise is because you
21 wanted to offer it into evidence.

22 MR. HERSCHMANN: That's correct. And the reason
23 doesn't matters.

24 THE COURT: Okay.

25 Q So, Ms. Genger, let me, I'm going to walk you through
26 the process.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 I'm going to ask you specific questions. If you recall
3 something specifically you should answer it. If you don't
4 recall specifically, then I'm going to ask you is there
5 something that would refresh your recollection. And the process
6 is then you can look at it and then say the document refreshes
7 my recollection and then answer it. Okay?

8 So, I'm going to go back to the November 8, 2007
9 meeting.

10 And do you recall specifically what was discussed in
11 the first topic dealing with Orly Genger 1993 Trust?

12 A Specifically, no.

13 Q Would the agenda refresh your recollection as to what
14 was discussed?

15 A Yes.

16 Q Can you take a moment to look at the agenda and tell us
17 after looking at it does it refresh your recollection as to what
18 was the first topic discussed as it related to the Orly Genger
19 1993 Trust?

20 A Yes.

21 Q Okay. What was of the first topic discussed?

22 A D&K.

23 Q And what was discussed after D&K was raised?

24 A Who was the general partner. Did Sagi have a copy of
25 the partnership agreement, the note.

26 Then, there is a topic of the note, who owns the note.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q When you say who is the general partner do you recall
3 the specific discussions as to percentages about your mother and
4 whether she remained the general partner, without looking at
5 document first?

6 A No.

7 Q If you look at the document does that refresh your
8 recollection?

9 A Yes.

10 Q And what was the first thing that was discussed after
11 you asked who were the general partners of D&K?

12 MR. DELLAPORTAS: I object on relevance grounds as
13 to this line of testimony.

14 MR. HERSCHMANN: I'm doing this as a general
15 proposition as to the subject matters that were discussed.

16 I can offer the agenda in and make it simple and go
17 through it or I can only do it this way, your Honor. That
18 is why I raised it in the first place.

19 I'm not saying it is proof. I'll do it any way Mr.
20 Dellaportas prefers.

21 THE COURT: He doesn't prefer anything. It is not
22 depending upon what he prefers. It is what you want to
23 prove.

24 He says it is not relevant.

25 Why is it relevant?

26 Q Well, did you generally discuss your trust and

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 associations with the D&K note?

3 A Yes.

4 Q Okay. After discussing your trust and the D&K note did
5 you then have discussions about TPR?

6 A Yes.

7 Q Okay. Do you recall specifically about what was
8 discussed in relationship to TPR and what percentages were not
9 owned by D&K, first, without looking at the document?

10 A No.

11 Q Looking at the document, does it refresh your
12 recollection as to what was the first thing you discussed about
13 TPR?

14 A Yes.

15 Q And what was that ?

16 A Who owns and what percentages the 49 percent not owned
17 by D&K.

18 Q And do you recall whether there was any discussion
19 about Rochell, R-O-C-H-E-L-L, Fang and your mother's interest?

20 A Yes.

21 Q After that did you have a discussion about whether or
22 not you can get copies of the minutes of meetings from TPR?

23 A Yes.

24 Q Did your brother agree to give you copies of the
25 minutes of meetings with TPR?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Did you then discuss with your brother what is the
3 distribution he was receiving from TPR?

4 MR. DELLAPORTAS: Objection. Relevance.

5 THE COURT: Overruled.

6 A Yes.

7 Q Okay. And do you recall raising the amount of his
8 getting \$45,000 per month?

9 A Yes.

10 Q And did your brother ever answer as to why he was
11 getting \$45,000 from TPR per month and how it was being
12 categorized?

13 MR. DELLAPORTAS: Objection, compound.

14 THE COURT: Let's take it one at a time.

15 Q Okay. Did your brother ascribe for you why he was
16 receiving \$45,000 per month?

17 A He may have and I don't remember.

18 His answers were long winded. So, I just don't
19 remember them.

20 Q Was there a discussion about why your mother was
21 receiving \$30,000 per month?

22 MR. DELLAPORTAS: Objection, lack of foundation.

23 THE COURT: Yes. Sustained.

24 Q Well, do you recall a discussion about what
25 distributions your mother was getting from TPR?

26 A Generally, yes.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Looking at the exhibit, does it refresh your
3 recollection as to what dollar amount your brother was being
4 questioned about regarding how much money your mother was
5 receiving?

6 A Yes.

7 Q What number did you question your brother about?

8 A \$30,000 a month.

9 Q Per month?

10 A Yes.

11 Q Do you recall then discussing with your brother how
12 could distributions be evened out between you, your mother and
13 your brother?

14 A Yes.

15 Q Did your brother at that time indicate his willingness
16 to even out the distribution between you, and your mother and
17 himself?

18 A No, he didn't.

19 Q Did your brother answer any questions about what are
20 the assets of TPR?

21 A Whatever answers he gave were so complicated and he
22 gave answers that confused everyone.

23 Q Well, did the Isaacson representatives say to your
24 brother during the course of the meeting that they were
25 satisfied with his answers?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q What did they say generally about the answers your
3 brother was giving?

4 MR. DELLAPORTAS: Objection. Hearsay.

5 THE COURT: Sustained.

6 Q Did you then cover what receivables were due TPR, just
7 generally?

8 A I don't remember.

9 Q Okay. If you look at exhibit 234, the agenda in front
10 of you, does that refresh your recollection as to what questions
11 were asked about the receivables due TPR?

12 A Yes.

13 Q And looking at that , does it refresh your recollection
14 about asking what happened to the \$1.9 million that your brother
15 owed TPR?

16 MR. DELLAPORTAS: Objection. Lack of foundation
17 and leading.

18 THE COURT: How about a foundation?

19 Q Okay. Well, does exhibit 234 refresh your recollection
20 as to whether the subject matters of how much money your brother
21 owed TPR was discussed on November 8, 2007?

22 A Yes.

23 Q Okay. Looking at exhibit 234 does it refresh your
24 recollection about the specific amount of money that was
25 discussed with your brother regarding how much money he owed
26 TPR?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q What was the amount of money that your brother was
4 asked about that he owed TPR?

5 MR. DELLAPORTAS: Just objection, your Honor.

6 This doesn't feel like a refreshed recollection.
7 It just feels like reading a document.

8 MR. HERSCHMANN: It's the only way to do it.

9 If Mr. Dellaportas wants me to go down --

10 THE COURT: You know, she was there. So, I do
11 believe there is a --

12 MR. DELLAPORTAS: Okay.

13 Q What is the amount?

14 A \$1.9 million.

15 Q Do you recall then having other discussions about other
16 monies that were owed TPR or owed by other officers to TPR?

17 A Yes.

18 Q Do you recall what was next discussed independent of
19 looking at the exhibit?

20 A No.

21 Q Looking at the exhibit, does it refresh your
22 recollection as to the next item that you discussed with your
23 brother?

24 A Yes.

25 Q Okay. What was the next item that you discussed with
26 your brother?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A The annual expense of TPR and then after that there was
3 trust administration.

4 Q I think you have to speak a little louder.

5 A Sorry.

6 Right after that there was what are the annual expenses
7 of TPR exclusive of above distributions to Sagi and Ariel Orly.

8 Q Did your brother answer what was the annual expense to
9 TPR when Isaacson & Company posed the question to him?

10 A Again, his answers were really convoluted and --

11 Q How about, was there a discussion about the amount of
12 lawsuits that TPR was involved with as either a plaintiff or a
13 defendant?

14 A Were there discussions?

15 Q Yes?

16 A Yes.

17 Q After that was there a discussion about potentially
18 buying out your interests?

19 A Yes.

20 Q And looking at exhibit 234 does it refresh your
21 recollection, specifically, about what you asked of your
22 brother?

23 A Yes.

24 Q What was asked?

25 A Was TPR, meaning Sagi, consider buying out Orly's
26 interest in TPR. -- Or D&K now giving proper discounts to the

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 D&K note and credit for the losses.

3 THE COURT: Well --

4 MR. HERSCHMANN: Those were the subject matters
5 that were discussed.

6 THE COURT: She is reading from it, though.

7 Q Now --

8 THE COURT: You're kind of abusing it now. She
9 cannot read from it.

10 Q All right.

11 So, the document is not in evidence, so you cannot read
12 from it. You can only look at it to refresh your recollection
13 and then answer the question. So.

14 THE COURT: And if you cannot answer the question,
15 then you cannot answer the question.

16 Q Now, was there a discussion about capital contributions
17 made to White Box?

18 A Yes.

19 Q After that do you recall what was discussed about TPR
20 and its relationship to White Box?

21 A Yes.

22 Q And do you recall at some point asking could you have
23 control of the tax filings of White Box?

24 A Yes.

25 Q Now, did you then move on to discuss your trustees and
26 administration of your trust?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Who were the trustees back in 2007?

4 A It was Lea Fang.

5 Q Did you discuss wanting someone else to become the
6 trustee of your trust?

7 A Yes.

8 MR. DELLAPORTAS: Objection, relevance.

9 THE COURT: Sustained.

10 Q In the course of this meeting was the agenda dealing
11 with your parents' divorce?

12 A No.

13 Q If you look at the agenda does it refresh your
14 recollection as to whether or not you had raised TRI or had
15 intended to raise TRI in any way?

16 A Does it refresh?

17 Q Yes?

18 A Yes, it does.

19 Q And is TRI something that was on your agenda to cover?

20 A No.

21 Q Now, did you then cover the Canadian ventures?

22 A Yes.

23 Q And do you recall, approximately, when you learned
24 about Riverside related entities?

25 A It was some time prior in '07, prior to this meeting.

26 Q And when you say some time prior to '07, was that in

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 relationship with your trying to get a better understanding of
3 finances?

4 A Yes.

5 Q And prior to having this meeting in November of 2007
6 had you met personally with Isaacson and Company
7 representatives?

8 A Before this meeting?

9 Q Yes?

10 A Yes.

11 Q If you go now to the issues, let's focus now on the
12 Canadian ventures.

13 Do you recall specifically what you first or what was
14 first asked of your brother in the November 8, 2007 meeting
15 regarding the Canadian ventures?

16 A Without -- Without looking at it? No.

17 Q Okay. Looking at exhibit 234 can you tell us if that
18 refreshes your recollection as to what was, what was the first
19 thing that you discussed in relationship to the Canadian
20 ventures?

21 A Yes.

22 Q What was the first thing that was discussed?

23 THE COURT: Without reading from this.

24 Q Without reading?

25 A What did I sell to my brother?

26 Q Was that a question that the representatives of

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 Isaacson & Company asked your brother even in November of 2007?

3 MR. DELLAPORTAS: Objection, hearsay.

4 THE COURT: Sustained.

5 Q How did your brother respond to the question of what
6 you had sold to him?

7 A To that particular question, I don't remember what his
8 response was.

9 Q Without looking at the agenda do you recall what was
10 discussed in connection with your brother about it?

11 THE COURT: About?

12 Q About the Canadian ventures?

13 THE COURT: Okay the Canadian ventures.

14 Q Yes?

15 A I mean, I have a specific --

16 Q Tell us what you recall being discussed about the
17 Canadian ventures, of the transfer. And then we can get into
18 the specifics. Tell us generally first what you recall?

19 A About the Canadian ventures what was discussed?

20 Q Yes?

21 A Specifically, I specifically asked my brother if we
22 could now transfer back my shares to me like he said he would
23 do. And I specifically remember my brother looking at me and
24 laughing and said, I don't know why you would want to do that,
25 it is valueless.

26 Q Did you believe him when he said that?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Did I believe what, that it was valueless?

3 Q Yes?

4 A What I believed is that, is that my brother tricked me.

5 Q And after that conversation did you still try to get
6 more information about the Canadian ventures from your brother
7 in that meeting?

8 A I don't remember what happened specifically right after
9 that. I know there was other, there was more conversation about
10 it. But, I cannot tell you specifically.

11 Q Looking at exhibit 234 did you have a discussion to
12 refresh your recollection specifically about the dollar values?

13 A Yes.

14 Q Okay. And does exhibit 234 refresh your recollection?

15 A Yes.

16 Q And what do you recall about discussing with your
17 brother in that meeting dealing with the valuations?

18 A That I had, I had sold my interest to him for 100,000
19 when I bought it for 150.

20 Q And then do you recall any discussions about the
21 valuations of the businesses currently?

22 A I am sorry, what was the question?

23 Q Could we read it back, please?

24 THE COURT: Yes, please.

25 (Record read)

26 Q I meant, generally. I mean the Canadian business?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Did your brother in the course of that meeting provide
4 you with any financial information as to where the money had
5 gone from the Canadian ventures?

6 A No.

7 Q Let me show you what you has been marked as exhibit
8 266-71, which is admitted into evidence.

9 And do you see on the bottom portion of the exhibit
10 266-71 that there is a reference that the White Paper -- I am
11 sorry, that the White Box papers were supposed to transfer to
12 Jonah from Bill Fischer and then Jonah can be reached at (212)
13 758-0000.

14 Do you see that ?

15 A Yes.

16 Q Does that refresh your recollection as to who were the
17 accountants for White Box in 2007?

18 A Yes.

19 Q Is that Jonah Gayer and Associates?

20 A I mean, it was supposed to be, it wasn't.

21 Q Do you know at some point whether Gayer and Associates
22 became the accountants for White Box? And I'm focused on the
23 2007 time period.

24 A I don't know that it ever actually switched to Jonah
25 Gayer.

26 Q Now, going back to the meeting in November, 2007, do

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 you recall that at the conclusion of the agenda there was an
3 over all subject matter that you wanted to address with your
4 brother?

5 A Yes.

6 (Continued on the next page)

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3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And what was the general tenure for what you were
3 looking to get from your brother in the November 2007 meeting?

4 A Information. Information about my finances.

5 Q And did you get information that was satisfactory to
6 you from your brother in that meeting?

7 A No.

8 Q Let me show you what's been previously received in
9 evidence as Exhibit 230.

10 MR. HERSCHMANN: Again, I'm providing an extra
11 copy to defense counsel.

12 (Handing to defense counsel.)

13 (Handing to witness.)

14 (Handing to the Court.)

15 Q Do you recall that after the meeting Isaacson &
16 Associates sent a letter to your brother?

17 THE COURT: Yeah, this is very leading.

18 MR. HERSCHMANN: I'm sorry?

19 THE COURT: Ask a question.

20 MR. HERSCHMANN: I'm trying to lay a foundation
21 for the exhibit.

22 THE COURT: It's too leading.

23 Q First, have you seen Exhibit 230 beforehand?

24 A Yes.

25 Q Did you have discussions with Isaacson & Associates
26 before Exhibit 230 was sent to your brother?

Exhibit C

3/23/2015 Genger -v- Genger Proceeding 032315

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2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 12

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-----X
ORLY GENDER,

4

Plaintiff

5

INDEX NUMBER:
100697/08

6

-against-

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SAGI GENDER,

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Defendant

-----X

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80 Centre Street
New York, New York 10013
March 23, 2015

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BEFORE:

HONORABLE: Barbara Jaffe, JSC

12

13

APPEARANCES:

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26

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3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 accounting firm?

3 A Yes.

4 Q What was the reason that you obtained a different
5 accounting firm?

6 A Well, around this time in 2007, I was trying to get
7 information about my finances from my brother. He did not want
8 to deal with Bill Fischer and told me that, you know, if I
9 wanted to have any conversations with him about it, I'd have
10 to --

11 Q I think you have to slow down.

12 A Sorry.

13 If I wanted to have any conversations with him
14 about my finances, I would have to work with an accountant that
15 was a new accountant, someone who was independent. So I hired a
16 new accountant.

17 Q Who did you hire?

18 A Joel Isaacson.

19 Q Did Joel Isaacson have anything to do with Raines &
20 Fischer?

21 A No.

22 Q Did Joel Isaacson & Associates have anything to do with
23 your father?

24 A No.

25 Q How did you come to hire Joel Isaacson?

26 A A friend of mine referred me to them.

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1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And a friend that was independent of Raines & Fischer
3 or your parents?

4 A Yes.

5 Q And after you hired Joel Isaacson & Company, then what
6 happened regarding your finances?

7 A They started trying to help me gather information, and
8 I know they contacted Sagi and tried to get information from
9 him. We tried to set up a meeting, and we finally were able to
10 set up a meeting with Sagi.

11 Q Do you recall, approximately, when you were able to set
12 up that meeting with your brother?

13 A I believe it was in November of 2007.

14 Q Do you recall whether or not your brother had sent
15 information to your new accountants Isaacson & Associates prior
16 to your having a meeting together with your brother?

17 A No, I know that he didn't.

18 Q Now, as far as the actual time period of the meeting,
19 do you recall how that actually got set or what transpired?

20 A How the meeting transpired?

21 Q Yes.

22 A Well, as I said, I was trying to get information from
23 my brother. I hired these new accountants, Joel Isaacson, and I
24 knew that my brother had all this information, and we contacted
25 him several times to try to set it up, and we finally --

26 Q I think you have to slow down.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 A We finally were able to set up a meeting.

3 Q Let me show you what's been marked as Exhibit 234 for
4 identification, and it's been previously discussed in this
5 matter.

6 (Handing to defense counsel.)

7 MR. HERSCHMANN: I'm providing a copy again to
8 defense counsel.

9 (Handing to witness.)

10 (Handing to the Court.)

11 Q I'm going to hand you an exhibit, what's been
12 previously marked as Exhibit 228 for identification, which is
13 Bates stamped JI 429. I'm providing again a copy to defense
14 counsel.

15 (Handing to defense counsel.)

16 (Handing to witness.)

17 Q Will you take a look at Exhibit 228 as well?

18 (Handing to the Court.)

19 Q I'm going to hand you also what's been marked as
20 266-135 as well. I'm providing a copy to defense counsel.

21 (Handing to defense counsel.)

22 (Handing to witness.)

23 Q Let me start with Exhibit 266-135.

24 (Handing to the Court.)

25 Q Do you see that this is an e-mail from Stan Altmark to
26 your brother?

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1 O. Genger - Plaintiff - Direct/Herschmann

2 A Yes.

3 Q And you've seen this e-mail before today, correct?

4 A Yes.

5 Q Now, looking at the e-mail, does it refresh your
6 recollection as to whether or not you had requested via Isaacson
7 & Company certain information in June of 2007 from your brother?

8 A Yes, I did.

9 Q And is it accurate that after making requests from your
10 brother in June of 2007, you had not received specific
11 information that you wanted prior to meeting with him?

12 A Yes.

13 Q Now, looking at Exhibit 228, if you could, for a
14 moment, have you seen Exhibit 228 previously?

15 A Yes.

16 Q And do you recognize this as an e-mail from Joel
17 Isaacson to your brother dated November 6th of 2007?

18 A Yes.

19 MR. HERSCHMANN: Your Honor, at this time I would
20 offer Exhibit 228 for identification into evidence.

21 MR. DELLAPORTAS: Objection. Hearsay.

22 MR. HERSCHMANN: Your Honor, we're offering it as
23 a communication that was sent as a representative from Orly
24 Genger to her brother. The actual content is irrelevant,
25 except for the fact that he actually received it.

26 MR. DELLAPORTAS: It's definitely being offered

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1 O. Genger - Plaintiff - Direct/Herschmann
2 for the truth of the matter, and it's hearsay, and it
3 hasn't been authenticated. It's from Joel Isaacson's
4 files.

5 THE COURT: Yeah, sustained.

6 Q Well, Ms. Genger, looking at Exhibit 228, do you recall
7 whether or not your brother was advised that Isaacson & Company
8 had no affiliation with Raines & Fischer?

9 A Yes.

10 Q And did you believe at the time Isaacson & Company was
11 making requests from your brother for certain documents, that
12 you were actually entitled to those documents?

13 A Yes.

14 Q Did you retain Isaacson & Company to help advise you on
15 the state of affair of your assets?

16 A Yes.

17 Q Who was the accountant handling the tax returns for
18 White Box in the 2007 time period? Was it Jonas Gayer, to your
19 knowledge, or was it Raines & Fischer, if you recall?

20 A Raines & Fischer.

21 Q Now, can you look at Exhibit 234, please? Do you have
22 the exhibit in front of you?

23 A Yes.

24 Q And you mentioned earlier that there was an agenda that
25 was put together for the November 8th, 2007 meeting.

26 Does this exhibit refresh your recollection as to

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1 O. Genger - Plaintiff - Direct/Herschmann

2 what was covered during the course of the meeting, as far as
3 your side was concerned?

4 MR. DELLAPORTAS: Objection. There's been no
5 testimony that she lacks recollection subject that it needs
6 to be refreshed.

7 Q Do you recall everything that happened at the November
8 8, 2007 meeting?

9 A I don't know if I recall everything, but I --

10 Q Is there a document that would help refresh your
11 recollection as to what was the agenda covered at the November
12 8, 2007 meeting?

13 A Yes.

14 Q Is the actual agenda the document that would help you
15 refresh your recollection?

16 A Yes.

17 Q So, now looking at Exhibit 234, does that refresh your
18 recollection as to what was expected to be covered by your
19 representatives with your brother on November 8, 2007?

20 A Yes.

21 Q So, can you first tell us how long did it take for you,
22 for your representatives, to arrange a meeting with your brother
23 to discuss your finances? Was it a week? Was it more than
24 that? And if the prior documents that I've handed you, Exhibit
25 266-135, refresh your recollection, please let us know.

26 MR. DELLAPORTAS: It's kind of leading.

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1 O. Genger - Plaintiff - Direct/Herschmann

2 THE COURT: You're putting the cart before the
3 horse.

4 MR. HERSCHMANN: Okay. Well, let me ask it.

5 Q Do you recall how long it took you to set up a meeting
6 with your brother?

7 A I know it was months.

8 Q Now, can you describe for us the general tenure of the
9 meeting; where it occurred, if you recall, what happened when
10 you got there?

11 A The meeting happened at Joel Isaacson's office, and the
12 people who were there who attended the meeting were Joel
13 Isaacson, Stan Altmark, Don Mullen, my mother, myself and my
14 brother. And the tenure was, I was trying to get information,
15 which is in this agenda. I had a lot of questions that I wanted
16 answered.

17 Q I want you to leave the agenda aside. If you can give
18 us the general -- was it in a conference room? What happened?

19 A It was in one of the conference rooms at Isaacson's
20 office.

21 Q And was Don Mullen the person who referred you to
22 Isaacson & Company?

23 A Yes, he was.

24 Q Now, just tell us generally what happened, and then
25 we'll cover the specifics in the course of the meeting.

26 A Generally, what happened was, all these people were

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1 O. Genger - Plaintiff - Direct/Herschmann
2 sitting in a room together. Joel Isaacson and Stan Altmark were
3 asking certain questions of Sagi. Sagi was not happy with the
4 fact that we were asking questions. He did most of the talking.
5 Stan or Joel would ask him a question and he would give a
6 five-minute speech on something and run -- I mean, just run
7 circles around everyone. He was not really answering questions.
8 And we were getting nowhere. And he became very upset by the
9 fact that we were asking him questions.

10 (Continued on next page.)
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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q And did you attempt to go through the agenda that is
3 contained in exhibit 234?

4 A Yes, we did.

5 Q Now, was the meeting to discuss your getting access to
6 financial information and to take control of your financial
7 life?

8 A Yes.

9 Q Was that expressed to your brother?

10 A Yes.

11 Q Did you address in anything -- well, withdrawn.

12 Do you recall specifically what you addressed regarding
13 your 1993 trust?

14 Just a foundational question that I have to ask before
15 I present the exhibit.

16 Do you recall specifically what was addressed?

17 A Without looking at it?

18 Q Without looking at it?

19 A Okay. I mean, generally, I know.

20 Q Would the agenda refresh your recollection as to
21 specifically what you were asking about your trust?

22 A Yes.

23 MR. HERSCHMANN: I would offer it in as a past
24 recollection refreshed and make the process easier or I can
25 do it this way.

26 THE COURT: Mr. Dellaportas, what do you say?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 MR. DELLAPORTAS: This agenda, do you mean?

3 THE COURT: Yes.

4 MR. DELLAPORTAS: It is hearsay.

5 MR. HERSCHMANN: Well, the past recollection
6 recorded, the present recollection refreshed.

7 THE COURT: I don't know that she recorded it.

8 MR. HERSCHMANN: She doesn't have to have recorded
9 it. She has to be able to articulate that this was an
10 accurate document of what was discussed at the meeting. She
11 doesn't have to be the actual person who sat down and
12 recorded it.

13 THE COURT: Is that your understanding, Mr.
14 Dellaportas?

15 MR. DELLAPORTAS: No.

16 THE COURT: I'm not sure either.

17 MR. HERSCHMANN: We can pull it up.

18 THE COURT: Just to refresh my own recollection.
19 Who has The Richardson?

20 MR. HERSCHMANN: I don't have it. And I think the
21 rule, and I can articulate it this way, if your secretary
22 sat there and took copious notes of the entire process and
23 said this accurately reflects what happened at the
24 meeting --

25 THE COURT: We don't know when it was prepared. I
26 don't know. Let's just get the rule.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 MR. HERSCHMANN: Okay.

3 (Short pause)

4 MR. DELLAPORTAS: There is a Judge Friedman's
5 section on it. It says, under the past recollection
6 recorded doctrine the memoranda of a fact known for an event
7 offered in the past for which the witness lacks sufficient
8 present recollection may be received in evidence to the
9 witness' oral testimony.

10 THE COURT: It doesn't say anything about having to
11 be prepared by the witness.

12 MR. DELLAPORTAS: There is a whole section in here.

13 THE COURT: I don't know, Mr. Herschmann.

14 MR. HERSCHMANN: If you want testimony, take a
15 moment, we can look at it. I have no problem.

16 But, I'm pretty confident the rule is exactly as
17 Mr. Dellaportas just read it.

18 It is not necessary that the witness be the one
19 that actually recorded it as much as they can say that
20 recording is accurate.

21 THE COURT: I'm pleased that you're confident. I
22 am not.

23 It didn't say anything about it, but that doesn't
24 mean --

25 MR. DELLAPORTAS: As I understand it this is the
26 agenda prepared before the meeting and thus isn't --

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 THE COURT: That is what I mean, also. It is not
3 contemporaneous.

4 MR. DELLAPORTAS: It is not notes from the meeting.
5 It is agenda in advance of the meeting.

6 MR. HERSCHMANN: Your Honor, the rule is as I
7 understand it, and Mr. Dellaportas if he wants to share that
8 with us and we can take a 5 minute recess.

9 THE COURT: I can go in the back and look at it.

10 MR. HERSCHMANN: If you would do that, your Honor,
11 that would be great.

12 Thank you, very much.

13 (Short recess; time is now 2:42 PM)

14 (2:45 PM)

15 THE COURT: I don't think so, Mr. Herschmann. Not
16 according to Richardson under the old book, which I'm sure
17 hasn't been changed too much, 66213, I don't know what it is
18 in the next edition. But, while the memorandum, any
19 memorandum made by anybody can be used to refresh, if you
20 want it in evidence when a witness has so far forgotten
21 facts that he cannot recall them even after looking at a
22 memorandum of them and he testified that he once knew them
23 and made a memorandum of them at the time or soon after,
24 which he intended to make correctly and which he believes to
25 be correct, such memorandum in his own handwriting may be
26 received as evidence of the facts contained although the

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 witness has no present recollection of them.

3 MR. HERSCHMANN: Your Honor, I think that's why I
4 raised the issue of past recollection refreshed or present
5 recollection recorded.

6 As I said, there are two ways to address. I can
7 address it with the witness as present recollection
8 refreshed, which is the process that the witness looks at
9 it.

10 THE COURT: Right. Then, this doesn't come into
11 evidence. But, you want it in evidence.

12 MR. HERSCHMANN: That's correct.

13 The reason I had it the way I did is that there are
14 two ways of dealing with it.

15 There is what I call the simpler process.

16 THE COURT: It is not coming into evidence.

17 MR. HERSCHMANN: Okay.

18 THE COURT: She can use it to refresh her
19 recollection if it indeed refreshes her recollection.

20 As I recall this whole exercise is because you
21 wanted to offer it into evidence.

22 MR. HERSCHMANN: That's correct. And the reason
23 doesn't matters.

24 THE COURT: Okay.

25 Q So, Ms. Genger, let me, I'm going to walk you through
26 the process.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 I'm going to ask you specific questions. If you recall
3 something specifically you should answer it. If you don't
4 recall specifically, then I'm going to ask you is there
5 something that would refresh your recollection. And the process
6 is then you can look at it and then say the document refreshes
7 my recollection and then answer it. Okay?

8 So, I'm going to go back to the November 8, 2007
9 meeting.

10 And do you recall specifically what was discussed in
11 the first topic dealing with Orly Genger 1993 Trust?

12 A Specifically, no.

13 Q Would the agenda refresh your recollection as to what
14 was discussed?

15 A Yes.

16 Q Can you take a moment to look at the agenda and tell us
17 after looking at it does it refresh your recollection as to what
18 was the first topic discussed as it related to the Orly Genger
19 1993 Trust?

20 A Yes.

21 Q Okay. What was of the first topic discussed?

22 A D&K.

23 Q And what was discussed after D&K was raised?

24 A Who was the general partner. Did Sagi have a copy of
25 the partnership agreement, the note.

26 Then, there is a topic of the note, who owns the note.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q When you say who is the general partner do you recall
3 the specific discussions as to percentages about your mother and
4 whether she remained the general partner, without looking at
5 document first?

6 A No.

7 Q If you look at the document does that refresh your
8 recollection?

9 A Yes.

10 Q And what was the first thing that was discussed after
11 you asked who were the general partners of D&K?

12 MR. DELLAPORTAS: I object on relevance grounds as
13 to this line of testimony.

14 MR. HERSCHMANN: I'm doing this as a general
15 proposition as to the subject matters that were discussed.

16 I can offer the agenda in and make it simple and go
17 through it or I can only do it this way, your Honor. That
18 is why I raised it in the first place.

19 I'm not saying it is proof. I'll do it any way Mr.
20 Dellaportas prefers.

21 THE COURT: He doesn't prefer anything. It is not
22 depending upon what he prefers. It is what you want to
23 prove.

24 He says it is not relevant.

25 Why is it relevant?

26 Q Well, did you generally discuss your trust and

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 associations with the D&K note?

3 A Yes.

4 Q Okay. After discussing your trust and the D&K note did
5 you then have discussions about TPR?

6 A Yes.

7 Q Okay. Do you recall specifically about what was
8 discussed in relationship to TPR and what percentages were not
9 owned by D&K, first, without looking at the document?

10 A No.

11 Q Looking at the document, does it refresh your
12 recollection as to what was the first thing you discussed about
13 TPR?

14 A Yes.

15 Q And what was that ?

16 A Who owns and what percentages the 49 percent not owned
17 by D&K.

18 Q And do you recall whether there was any discussion
19 about Rochell, R-O-C-H-E-L-L, Fang and your mother's interest?

20 A Yes.

21 Q After that did you have a discussion about whether or
22 not you can get copies of the minutes of meetings from TPR?

23 A Yes.

24 Q Did your brother agree to give you copies of the
25 minutes of meetings with TPR?

26 A No.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Did you then discuss with your brother what is the
3 distribution he was receiving from TPR?

4 MR. DELLAPORTAS: Objection. Relevance.

5 THE COURT: Overruled.

6 A Yes.

7 Q Okay. And do you recall raising the amount of his
8 getting \$45,000 per month?

9 A Yes.

10 Q And did your brother ever answer as to why he was
11 getting \$45,000 from TPR per month and how it was being
12 categorized?

13 MR. DELLAPORTAS: Objection, compound.

14 THE COURT: Let's take it one at a time.

15 Q Okay. Did your brother ascribe for you why he was
16 receiving \$45,000 per month?

17 A He may have and I don't remember.

18 His answers were long winded. So, I just don't
19 remember them.

20 Q Was there a discussion about why your mother was
21 receiving \$30,000 per month?

22 MR. DELLAPORTAS: Objection, lack of foundation.

23 THE COURT: Yes. Sustained.

24 Q Well, do you recall a discussion about what
25 distributions your mother was getting from TPR?

26 A Generally, yes.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Looking at the exhibit, does it refresh your
3 recollection as to what dollar amount your brother was being
4 questioned about regarding how much money your mother was
5 receiving?

6 A Yes.

7 Q What number did you question your brother about?

8 A \$30,000 a month.

9 Q Per month?

10 A Yes.

11 Q Do you recall then discussing with your brother how
12 could distributions be evened out between you, your mother and
13 your brother?

14 A Yes.

15 Q Did your brother at that time indicate his willingness
16 to even out the distribution between you, and your mother and
17 himself?

18 A No, he didn't.

19 Q Did your brother answer any questions about what are
20 the assets of TPR?

21 A Whatever answers he gave were so complicated and he
22 gave answers that confused everyone.

23 Q Well, did the Isaacson representatives say to your
24 brother during the course of the meeting that they were
25 satisfied with his answers?

26 A No.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q What did they say generally about the answers your
3 brother was giving?

4 MR. DELLAPORTAS: Objection. Hearsay.

5 THE COURT: Sustained.

6 Q Did you then cover what receivables were due TPR, just
7 generally?

8 A I don't remember.

9 Q Okay. If you look at exhibit 234, the agenda in front
10 of you, does that refresh your recollection as to what questions
11 were asked about the receivables due TPR?

12 A Yes.

13 Q And looking at that , does it refresh your recollection
14 about asking what happened to the \$1.9 million that your brother
15 owed TPR?

16 MR. DELLAPORTAS: Objection. Lack of foundation
17 and leading.

18 THE COURT: How about a foundation?

19 Q Okay. Well, does exhibit 234 refresh your recollection
20 as to whether the subject matters of how much money your brother
21 owed TPR was discussed on November 8, 2007?

22 A Yes.

23 Q Okay. Looking at exhibit 234 does it refresh your
24 recollection about the specific amount of money that was
25 discussed with your brother regarding how much money he owed
26 TPR?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q What was the amount of money that your brother was
4 asked about that he owed TPR?

5 MR. DELLAPORTAS: Just objection, your Honor.

6 This doesn't feel like a refreshed recollection.

7 It just feels like reading a document.

8 MR. HERSCHMANN: It's the only way to do it.

9 If Mr. Dellaportas wants me to go down --

10 THE COURT: You know, she was there. So, I do
11 believe there is a --

12 MR. DELLAPORTAS: Okay.

13 Q What is the amount?

14 A \$1.9 million.

15 Q Do you recall then having other discussions about other
16 monies that were owed TPR or owed by other officers to TPR?

17 A Yes.

18 Q Do you recall what was next discussed independent of
19 looking at the exhibit?

20 A No.

21 Q Looking at the exhibit, does it refresh your
22 recollection as to the next item that you discussed with your
23 brother?

24 A Yes.

25 Q Okay. What was the next item that you discussed with
26 your brother?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A The annual expense of TPR and then after that there was
3 trust administration.

4 Q I think you have to speak a little louder.

5 A Sorry.

6 Right after that there was what are the annual expenses
7 of TPR exclusive of above distributions to Sagi and Ariel Orly.

8 Q Did your brother answer what was the annual expense to
9 TPR when Isaacson & Company posed the question to him?

10 A Again, his answers were really convoluted and --

11 Q How about, was there a discussion about the amount of
12 lawsuits that TPR was involved with as either a plaintiff or a
13 defendant?

14 A Were there discussions?

15 Q Yes?

16 A Yes.

17 Q After that was there a discussion about potentially
18 buying out your interests?

19 A Yes.

20 Q And looking at exhibit 234 does it refresh your
21 recollection, specifically, about what you asked of your
22 brother?

23 A Yes.

24 Q What was asked?

25 A Was TPR, meaning Sagi, consider buying out Orly's
26 interest in TPR. -- Or D&K now giving proper discounts to the

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 D&K note and credit for the losses.

3 THE COURT: Well --

4 MR. HERSCHMANN: Those were the subject matters
5 that were discussed.

6 THE COURT: She is reading from it, though.

7 Q Now --

8 THE COURT: You're kind of abusing it now. She
9 cannot read from it.

10 Q All right.

11 So, the document is not in evidence, so you cannot read
12 from it. You can only look at it to refresh your recollection
13 and then answer the question. So.

14 THE COURT: And if you cannot answer the question,
15 then you cannot answer the question.

16 Q Now, was there a discussion about capital contributions
17 made to White Box?

18 A Yes.

19 Q After that do you recall what was discussed about TPR
20 and its relationship to White Box?

21 A Yes.

22 Q And do you recall at some point asking could you have
23 control of the tax filings of White Box?

24 A Yes.

25 Q Now, did you then move on to discuss your trustees and
26 administration of your trust?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Who were the trustees back in 2007?

4 A It was Lea Fang.

5 Q Did you discuss wanting someone else to become the
6 trustee of your trust?

7 A Yes.

8 MR. DELLAPORTAS: Objection, relevance.

9 THE COURT: Sustained.

10 Q In the course of this meeting was the agenda dealing
11 with your parents' divorce?

12 A No.

13 Q If you look at the agenda does it refresh your
14 recollection as to whether or not you had raised TRI or had
15 intended to raise TRI in any way?

16 A Does it refresh?

17 Q Yes?

18 A Yes, it does.

19 Q And is TRI something that was on your agenda to cover?

20 A No.

21 Q Now, did you then cover the Canadian ventures?

22 A Yes.

23 Q And do you recall, approximately, when you learned
24 about Riverside related entities?

25 A It was some time prior in '07, prior to this meeting.

26 Q And when you say some time prior to '07, was that in

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 relationship with your trying to get a better understanding of
3 finances?

4 A Yes.

5 Q And prior to having this meeting in November of 2007
6 had you met personally with Isaacson and Company
7 representatives?

8 A Before this meeting?

9 Q Yes?

10 A Yes.

11 Q If you go now to the issues, let's focus now on the
12 Canadian ventures.

13 Do you recall specifically what you first or what was
14 first asked of your brother in the November 8, 2007 meeting
15 regarding the Canadian ventures?

16 A Without -- Without looking at it? No.

17 Q Okay. Looking at exhibit 234 can you tell us if that
18 refreshes your recollection as to what was, what was the first
19 thing that you discussed in relationship to the Canadian
20 ventures?

21 A Yes.

22 Q What was the first thing that was discussed?

23 THE COURT: Without reading from this.

24 Q Without reading?

25 A What did I sell to my brother?

26 Q Was that a question that the representatives of

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 Isaacson & Company asked your brother even in November of 2007?

3 MR. DELLAPORTAS: Objection, hearsay.

4 THE COURT: Sustained.

5 Q How did your brother respond to the question of what
6 you had sold to him?

7 A To that particular question, I don't remember what his
8 response was.

9 Q Without looking at the agenda do you recall what was
10 discussed in connection with your brother about it?

11 THE COURT: About?

12 Q About the Canadian ventures?

13 THE COURT: Okay the Canadian ventures.

14 Q Yes?

15 A I mean, I have a specific --

16 Q Tell us what you recall being discussed about the
17 Canadian ventures, of the transfer. And then we can get into
18 the specifics. Tell us generally first what you recall?

19 A About the Canadian ventures what was discussed?

20 Q Yes?

21 A Specifically, I specifically asked my brother if we
22 could now transfer back my shares to me like he said he would
23 do. And I specifically remember my brother looking at me and
24 laughing and said, I don't know why you would want to do that,
25 it is valueless.

26 Q Did you believe him when he said that?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Did I believe what, that it was valueless?

3 Q Yes?

4 A What I believed is that, is that my brother tricked me.

5 Q And after that conversation did you still try to get
6 more information about the Canadian ventures from your brother
7 in that meeting?

8 A I don't remember what happened specifically right after
9 that. I know there was other, there was more conversation about
10 it. But, I cannot tell you specifically.

11 Q Looking at exhibit 234 did you have a discussion to
12 refresh your recollection specifically about the dollar values?

13 A Yes.

14 Q Okay. And does exhibit 234 refresh your recollection?

15 A Yes.

16 Q And what do you recall about discussing with your
17 brother in that meeting dealing with the valuations?

18 A That I had, I had sold my interest to him for 100,000
19 when I bought it for 150.

20 Q And then do you recall any discussions about the
21 valuations of the businesses currently?

22 A I am sorry, what was the question?

23 Q Could we read it back, please?

24 THE COURT: Yes, please.

25 (Record read)

26 Q I meant, generally. I mean the Canadian business?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Did your brother in the course of that meeting provide
4 you with any financial information as to where the money had
5 gone from the Canadian ventures?

6 A No.

7 Q Let me show you what you has been marked as exhibit
8 266-71, which is admitted into evidence.

9 And do you see on the bottom portion of the exhibit
10 266-71 that there is a reference that the White Paper -- I am
11 sorry, that the White Box papers were supposed to transfer to
12 Jonah from Bill Fischer and then Jonah can be reached at (212)
13 758-0000.

14 Do you see that ?

15 A Yes.

16 Q Does that refresh your recollection as to who were the
17 accountants for White Box in 2007?

18 A Yes.

19 Q Is that Jonah Gayer and Associates?

20 A I mean, it was supposed to be, it wasn't.

21 Q Do you know at some point whether Gayer and Associates
22 became the accountants for White Box? And I'm focused on the
23 2007 time period.

24 A I don't know that it ever actually switched to Jonah
25 Gayer.

26 Q Now, going back to the meeting in November, 2007, do

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 you recall that at the conclusion of the agenda there was an
3 over all subject matter that you wanted to address with your
4 brother?

5 A Yes.

6 (Continued on the next page)

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3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And what was the general tenure for what you were
3 looking to get from your brother in the November 2007 meeting?

4 A Information. Information about my finances.

5 Q And did you get information that was satisfactory to
6 you from your brother in that meeting?

7 A No.

8 Q Let me show you what's been previously received in
9 evidence as Exhibit 230.

10 MR. HERSCHMANN: Again, I'm providing an extra
11 copy to defense counsel.

12 (Handing to defense counsel.)

13 (Handing to witness.)

14 (Handing to the Court.)

15 Q Do you recall that after the meeting Isaacson &
16 Associates sent a letter to your brother?

17 THE COURT: Yeah, this is very leading.

18 MR. HERSCHMANN: I'm sorry?

19 THE COURT: Ask a question.

20 MR. HERSCHMANN: I'm trying to lay a foundation
21 for the exhibit.

22 THE COURT: It's too leading.

23 Q First, have you seen Exhibit 230 beforehand?

24 A Yes.

25 Q Did you have discussions with Isaacson & Associates
26 before Exhibit 230 was sent to your brother?

Exhibit C

3/23/2015 Genger -v- Genger Proceeding 032315

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 12

-----X
ORLY GENDER,

Plaintiff

INDEX NUMBER:
100697/08

-against-

SAGI GENDER,

Defendant

-----X

80 Centre Street
New York, New York 10013
March 23, 2015

BEFORE:

HONORABLE: Barbara Jaffe, JSC

APPEARANCES:

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Delores Hilliard
Vicki K. Glover

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3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 accounting firm?

3 A Yes.

4 Q What was the reason that you obtained a different
5 accounting firm?

6 A Well, around this time in 2007, I was trying to get
7 information about my finances from my brother. He did not want
8 to deal with Bill Fischer and told me that, you know, if I
9 wanted to have any conversations with him about it, I'd have
10 to --

11 Q I think you have to slow down.

12 A Sorry.

13 If I wanted to have any conversations with him
14 about my finances, I would have to work with an accountant that
15 was a new accountant, someone who was independent. So I hired a
16 new accountant.

17 Q Who did you hire?

18 A Joel Isaacson.

19 Q Did Joel Isaacson have anything to do with Raines &
20 Fischer?

21 A No.

22 Q Did Joel Isaacson & Associates have anything to do with
23 your father?

24 A No.

25 Q How did you come to hire Joel Isaacson?

26 A A friend of mine referred me to them.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 Q And a friend that was independent of Raines & Fischer
3 or your parents?

4 A Yes.

5 Q And after you hired Joel Isaacson & Company, then what
6 happened regarding your finances?

7 A They started trying to help me gather information, and
8 I know they contacted Sagi and tried to get information from
9 him. We tried to set up a meeting, and we finally were able to
10 set up a meeting with Sagi.

11 Q Do you recall, approximately, when you were able to set
12 up that meeting with your brother?

13 A I believe it was in November of 2007.

14 Q Do you recall whether or not your brother had sent
15 information to your new accountants Isaacson & Associates prior
16 to your having a meeting together with your brother?

17 A No, I know that he didn't.

18 Q Now, as far as the actual time period of the meeting,
19 do you recall how that actually got set or what transpired?

20 A How the meeting transpired?

21 Q Yes.

22 A Well, as I said, I was trying to get information from
23 my brother. I hired these new accountants, Joel Isaacson, and I
24 knew that my brother had all this information, and we contacted
25 him several times to try to set it up, and we finally --

26 Q I think you have to slow down.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 A We finally were able to set up a meeting.

3 Q Let me show you what's been marked as Exhibit 234 for
4 identification, and it's been previously discussed in this
5 matter.

6 (Handing to defense counsel.)

7 MR. HERSCHMANN: I'm providing a copy again to
8 defense counsel.

9 (Handing to witness.)

10 (Handing to the Court.)

11 Q I'm going to hand you an exhibit, what's been
12 previously marked as Exhibit 228 for identification, which is
13 Bates stamped JI 429. I'm providing again a copy to defense
14 counsel.

15 (Handing to defense counsel.)

16 (Handing to witness.)

17 Q Will you take a look at Exhibit 228 as well?

18 (Handing to the Court.)

19 Q I'm going to hand you also what's been marked as
20 266-135 as well. I'm providing a copy to defense counsel.

21 (Handing to defense counsel.)

22 (Handing to witness.)

23 Q Let me start with Exhibit 266-135.

24 (Handing to the Court.)

25 Q Do you see that this is an e-mail from Stan Altmark to
26 your brother?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 A Yes.

3 Q And you've seen this e-mail before today, correct?

4 A Yes.

5 Q Now, looking at the e-mail, does it refresh your
6 recollection as to whether or not you had requested via Isaacson
7 & Company certain information in June of 2007 from your brother?

8 A Yes, I did.

9 Q And is it accurate that after making requests from your
10 brother in June of 2007, you had not received specific
11 information that you wanted prior to meeting with him?

12 A Yes.

13 Q Now, looking at Exhibit 228, if you could, for a
14 moment, have you seen Exhibit 228 previously?

15 A Yes.

16 Q And do you recognize this as an e-mail from Joel
17 Isaacson to your brother dated November 6th of 2007?

18 A Yes.

19 MR. HERSCHMANN: Your Honor, at this time I would
20 offer Exhibit 228 for identification into evidence.

21 MR. DELLAPORTAS: Objection. Hearsay.

22 MR. HERSCHMANN: Your Honor, we're offering it as
23 a communication that was sent as a representative from Orly
24 Genger to her brother. The actual content is irrelevant,
25 except for the fact that he actually received it.

26 MR. DELLAPORTAS: It's definitely being offered

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann
2 for the truth of the matter, and it's hearsay, and it
3 hasn't been authenticated. It's from Joel Isaacson's
4 files.

5 THE COURT: Yeah, sustained.

6 Q Well, Ms. Genger, looking at Exhibit 228, do you recall
7 whether or not your brother was advised that Isaacson & Company
8 had no affiliation with Raines & Fischer?

9 A Yes.

10 Q And did you believe at the time Isaacson & Company was
11 making requests from your brother for certain documents, that
12 you were actually entitled to those documents?

13 A Yes.

14 Q Did you retain Isaacson & Company to help advise you on
15 the state of affair of your assets?

16 A Yes.

17 Q Who was the accountant handling the tax returns for
18 White Box in the 2007 time period? Was it Jonas Gayer, to your
19 knowledge, or was it Raines & Fischer, if you recall?

20 A Raines & Fischer.

21 Q Now, can you look at Exhibit 234, please? Do you have
22 the exhibit in front of you?

23 A Yes.

24 Q And you mentioned earlier that there was an agenda that
25 was put together for the November 8th, 2007 meeting.

26 Does this exhibit refresh your recollection as to

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann
2 what was covered during the course of the meeting, as far as
3 your side was concerned?

4 MR. DELLAPORTAS: Objection. There's been no
5 testimony that she lacks recollection subject that it needs
6 to be refreshed.

7 Q Do you recall everything that happened at the November
8 8, 2007 meeting?

9 A I don't know if I recall everything, but I --

10 Q Is there a document that would help refresh your
11 recollection as to what was the agenda covered at the November
12 8, 2007 meeting?

13 A Yes.

14 Q Is the actual agenda the document that would help you
15 refresh your recollection?

16 A Yes.

17 Q So, now looking at Exhibit 234, does that refresh your
18 recollection as to what was expected to be covered by your
19 representatives with your brother on November 8, 2007?

20 A Yes.

21 Q So, can you first tell us how long did it take for you,
22 for your representatives, to arrange a meeting with your brother
23 to discuss your finances? Was it a week? Was it more than
24 that? And if the prior documents that I've handed you, Exhibit
25 266-135, refresh your recollection, please let us know.

26 MR. DELLAPORTAS: It's kind of leading.

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann

2 THE COURT: You're putting the cart before the
3 horse.

4 MR. HERSCHMANN: Okay. Well, let me ask it.

5 Q Do you recall how long it took you to set up a meeting
6 with your brother?

7 A I know it was months.

8 Q Now, can you describe for us the general tenure of the
9 meeting; where it occurred, if you recall, what happened when
10 you got there?

11 A The meeting happened at Joel Isaacson's office, and the
12 people who were there who attended the meeting were Joel
13 Isaacson, Stan Altmark, Don Mullen, my mother, myself and my
14 brother. And the tenure was, I was trying to get information,
15 which is in this agenda. I had a lot of questions that I wanted
16 answered.

17 Q I want you to leave the agenda aside. If you can give
18 us the general -- was it in a conference room? What happened?

19 A It was in one of the conference rooms at Isaacson's
20 office.

21 Q And was Don Mullen the person who referred you to
22 Isaacson & Company?

23 A Yes, he was.

24 Q Now, just tell us generally what happened, and then
25 we'll cover the specifics in the course of the meeting.

26 A Generally, what happened was, all these people were

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - Plaintiff - Direct/Herschmann
2 sitting in a room together. Joel Isaacson and Stan Altmark were
3 asking certain questions of Sagi. Sagi was not happy with the
4 fact that we were asking questions. He did most of the talking.
5 Stan or Joel would ask him a question and he would give a
6 five-minute speech on something and run -- I mean, just run
7 circles around everyone. He was not really answering questions.
8 And we were getting nowhere. And he became very upset by the
9 fact that we were asking him questions.

10 (Continued on next page.)
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3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q And did you attempt to go through the agenda that is
3 contained in exhibit 234?

4 A Yes, we did.

5 Q Now, was the meeting to discuss your getting access to
6 financial information and to take control of your financial
7 life?

8 A Yes.

9 Q Was that expressed to your brother?

10 A Yes.

11 Q Did you address in anything -- well, withdrawn.

12 Do you recall specifically what you addressed regarding
13 your 1993 trust?

14 Just a foundational question that I have to ask before
15 I present the exhibit.

16 Do you recall specifically what was addressed?

17 A Without looking at it?

18 Q Without looking at it?

19 A Okay. I mean, generally, I know.

20 Q Would the agenda refresh your recollection as to
21 specifically what you were asking about your trust?

22 A Yes.

23 MR. HERSCHMANN: I would offer it in as a past
24 recollection refreshed and make the process easier or I can
25 do it this way.

26 THE COURT: Mr. Dellaportas, what do you say?

3/23/2015 Genger -v- Genger Proceeding 032315

1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 MR. DELLAPORTAS: This agenda, do you mean?

3 THE COURT: Yes.

4 MR. DELLAPORTAS: It is hearsay.

5 MR. HERSCHMANN: Well, the past recollection
6 recorded, the present recollection refreshed.

7 THE COURT: I don't know that she recorded it.

8 MR. HERSCHMANN: She doesn't have to have recorded
9 it. She has to be able to articulate that this was an
10 accurate document of what was discussed at the meeting. She
11 doesn't have to be the actual person who sat down and
12 recorded it.

13 THE COURT: Is that your understanding, Mr.
14 Dellaportas?

15 MR. DELLAPORTAS: No.

16 THE COURT: I'm not sure either.

17 MR. HERSCHMANN: We can pull it up.

18 THE COURT: Just to refresh my own recollection.
19 Who has The Richardson?

20 MR. HERSCHMANN: I don't have it. And I think the
21 rule, and I can articulate it this way, if your secretary
22 sat there and took copious notes of the entire process and
23 said this accurately reflects what happened at the
24 meeting --

25 THE COURT: We don't know when it was prepared. I
26 don't know. Let's just get the rule.

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2 MR. HERSCHMANN: Okay.

3 (Short pause)

4 MR. DELLAPORTAS: There is a Judge Friedman's
5 section on it. It says, under the past recollection
6 recorded doctrine the memoranda of a fact known for an event
7 offered in the past for which the witness lacks sufficient
8 present recollection may be received in evidence to the
9 witness' oral testimony.

10 THE COURT: It doesn't say anything about having to
11 be prepared by the witness.

12 MR. DELLAPORTAS: There is a whole section in here.

13 THE COURT: I don't know, Mr. Herschmann.

14 MR. HERSCHMANN: If you want testimony, take a
15 moment, we can look at it. I have no problem.

16 But, I'm pretty confident the rule is exactly as
17 Mr. Dellaportas just read it.

18 It is not necessary that the witness be the one
19 that actually recorded it as much as they can say that
20 recording is accurate.

21 THE COURT: I'm pleased that you're confident. I
22 am not.

23 It didn't say anything about it, but that doesn't
24 mean --

25 MR. DELLAPORTAS: As I understand it this is the
26 agenda prepared before the meeting and thus isn't --

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2 THE COURT: That is what I mean, also. It is not
3 contemporaneous.

4 MR. DELLAPORTAS: It is not notes from the meeting.
5 It is agenda in advance of the meeting.

6 MR. HERSCHMANN: Your Honor, the rule is as I
7 understand it, and Mr. Dellaportas if he wants to share that
8 with us and we can take a 5 minute recess.

9 THE COURT: I can go in the back and look at it.

10 MR. HERSCHMANN: If you would do that, your Honor,
11 that would be great.

12 Thank you, very much.

13 (Short recess; time is now 2:42 PM)

14 (2:45 PM)

15 THE COURT: I don't think so, Mr. Herschmann. Not
16 according to Richardson under the old book, which I'm sure
17 hasn't been changed too much, 66213, I don't know what it is
18 in the next edition. But, while the memorandum, any
19 memorandum made by anybody can be used to refresh, if you
20 want it in evidence when a witness has so far forgotten
21 facts that he cannot recall them even after looking at a
22 memorandum of them and he testified that he once knew them
23 and made a memorandum of them at the time or soon after,
24 which he intended to make correctly and which he believes to
25 be correct, such memorandum in his own handwriting may be
26 received as evidence of the facts contained although the

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2 witness has no present recollection of them.

3 MR. HERSCHMANN: Your Honor, I think that's why I
4 raised the issue of past recollection refreshed or present
5 recollection recorded.

6 As I said, there are two ways to address. I can
7 address it with the witness as present recollection
8 refreshed, which is the process that the witness looks at
9 it.

10 THE COURT: Right. Then, this doesn't come into
11 evidence. But, you want it in evidence.

12 MR. HERSCHMANN: That's correct.

13 The reason I had it the way I did is that there are
14 two ways of dealing with it.

15 There is what I call the simpler process.

16 THE COURT: It is not coming into evidence.

17 MR. HERSCHMANN: Okay.

18 THE COURT: She can use it to refresh her
19 recollection if it indeed refreshes her recollection.

20 As I recall this whole exercise is because you
21 wanted to offer it into evidence.

22 MR. HERSCHMANN: That's correct. And the reason
23 doesn't matters.

24 THE COURT: Okay.

25 Q So, Ms. Genger, let me, I'm going to walk you through
26 the process.

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2 I'm going to ask you specific questions. If you recall
3 something specifically you should answer it. If you don't
4 recall specifically, then I'm going to ask you is there
5 something that would refresh your recollection. And the process
6 is then you can look at it and then say the document refreshes
7 my recollection and then answer it. Okay?

8 So, I'm going to go back to the November 8, 2007
9 meeting.

10 And do you recall specifically what was discussed in
11 the first topic dealing with Orly Genger 1993 Trust?

12 A Specifically, no.

13 Q Would the agenda refresh your recollection as to what
14 was discussed?

15 A Yes.

16 Q Can you take a moment to look at the agenda and tell us
17 after looking at it does it refresh your recollection as to what
18 was the first topic discussed as it related to the Orly Genger
19 1993 Trust?

20 A Yes.

21 Q Okay. What was of the first topic discussed?

22 A D&K.

23 Q And what was discussed after D&K was raised?

24 A Who was the general partner. Did Sagi have a copy of
25 the partnership agreement, the note.

26 Then, there is a topic of the note, who owns the note.

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2 Q When you say who is the general partner do you recall
3 the specific discussions as to percentages about your mother and
4 whether she remained the general partner, without looking at
5 document first?

6 A No.

7 Q If you look at the document does that refresh your
8 recollection?

9 A Yes.

10 Q And what was the first thing that was discussed after
11 you asked who were the general partners of D&K?

12 MR. DELLAPORTAS: I object on relevance grounds as
13 to this line of testimony.

14 MR. HERSCHMANN: I'm doing this as a general
15 proposition as to the subject matters that were discussed.

16 I can offer the agenda in and make it simple and go
17 through it or I can only do it this way, your Honor. That
18 is why I raised it in the first place.

19 I'm not saying it is proof. I'll do it any way Mr.
20 Dellaportas prefers.

21 THE COURT: He doesn't prefer anything. It is not
22 depending upon what he prefers. It is what you want to
23 prove.

24 He says it is not relevant.

25 Why is it relevant?

26 Q Well, did you generally discuss your trust and

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 associations with the D&K note?

3 A Yes.

4 Q Okay. After discussing your trust and the D&K note did
5 you then have discussions about TPR?

6 A Yes.

7 Q Okay. Do you recall specifically about what was
8 discussed in relationship to TPR and what percentages were not
9 owned by D&K, first, without looking at the document?

10 A No.

11 Q Looking at the document, does it refresh your
12 recollection as to what was the first thing you discussed about
13 TPR?

14 A Yes.

15 Q And what was that ?

16 A Who owns and what percentages the 49 percent not owned
17 by D&K.

18 Q And do you recall whether there was any discussion
19 about Rochell, R-O-C-H-E-L-L, Fang and your mother's interest?

20 A Yes.

21 Q After that did you have a discussion about whether or
22 not you can get copies of the minutes of meetings from TPR?

23 A Yes.

24 Q Did your brother agree to give you copies of the
25 minutes of meetings with TPR?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q Did you then discuss with your brother what is the
3 distribution he was receiving from TPR?

4 MR. DELLAPORTAS: Objection. Relevance.

5 THE COURT: Overruled.

6 A Yes.

7 Q Okay. And do you recall raising the amount of his
8 getting \$45,000 per month?

9 A Yes.

10 Q And did your brother ever answer as to why he was
11 getting \$45,000 from TPR per month and how it was being
12 categorized?

13 MR. DELLAPORTAS: Objection, compound.

14 THE COURT: Let's take it one at a time.

15 Q Okay. Did your brother ascribe for you why he was
16 receiving \$45,000 per month?

17 A He may have and I don't remember.

18 His answers were long winded. So, I just don't
19 remember them.

20 Q Was there a discussion about why your mother was
21 receiving \$30,000 per month?

22 MR. DELLAPORTAS: Objection, lack of foundation.

23 THE COURT: Yes. Sustained.

24 Q Well, do you recall a discussion about what
25 distributions your mother was getting from TPR?

26 A Generally, yes.

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2 Q Looking at the exhibit, does it refresh your
3 recollection as to what dollar amount your brother was being
4 questioned about regarding how much money your mother was
5 receiving?

6 A Yes.

7 Q What number did you question your brother about?

8 A \$30,000 a month.

9 Q Per month?

10 A Yes.

11 Q Do you recall then discussing with your brother how
12 could distributions be evened out between you, your mother and
13 your brother?

14 A Yes.

15 Q Did your brother at that time indicate his willingness
16 to even out the distribution between you, and your mother and
17 himself?

18 A No, he didn't.

19 Q Did your brother answer any questions about what are
20 the assets of TPR?

21 A Whatever answers he gave were so complicated and he
22 gave answers that confused everyone.

23 Q Well, did the Isaacson representatives say to your
24 brother during the course of the meeting that they were
25 satisfied with his answers?

26 A No.

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 Q What did they say generally about the answers your
3 brother was giving?

4 MR. DELLAPORTAS: Objection. Hearsay.

5 THE COURT: Sustained.

6 Q Did you then cover what receivables were due TPR, just
7 generally?

8 A I don't remember.

9 Q Okay. If you look at exhibit 234, the agenda in front
10 of you, does that refresh your recollection as to what questions
11 were asked about the receivables due TPR?

12 A Yes.

13 Q And looking at that , does it refresh your recollection
14 about asking what happened to the \$1.9 million that your brother
15 owed TPR?

16 MR. DELLAPORTAS: Objection. Lack of foundation
17 and leading.

18 THE COURT: How about a foundation?

19 Q Okay. Well, does exhibit 234 refresh your recollection
20 as to whether the subject matters of how much money your brother
21 owed TPR was discussed on November 8, 2007?

22 A Yes.

23 Q Okay. Looking at exhibit 234 does it refresh your
24 recollection about the specific amount of money that was
25 discussed with your brother regarding how much money he owed
26 TPR?

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2 A Yes.

3 Q What was the amount of money that your brother was
4 asked about that he owed TPR?

5 MR. DELLAPORTAS: Just objection, your Honor.

6 This doesn't feel like a refreshed recollection.

7 It just feels like reading a document.

8 MR. HERSCHMANN: It's the only way to do it.

9 If Mr. Dellaportas wants me to go down --

10 THE COURT: You know, she was there. So, I do
11 believe there is a --

12 MR. DELLAPORTAS: Okay.

13 Q What is the amount?

14 A \$1.9 million.

15 Q Do you recall then having other discussions about other
16 monies that were owed TPR or owed by other officers to TPR?

17 A Yes.

18 Q Do you recall what was next discussed independent of
19 looking at the exhibit?

20 A No.

21 Q Looking at the exhibit, does it refresh your
22 recollection as to the next item that you discussed with your
23 brother?

24 A Yes.

25 Q Okay. What was the next item that you discussed with
26 your brother?

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2 A The annual expense of TPR and then after that there was
3 trust administration.

4 Q I think you have to speak a little louder.

5 A Sorry.

6 Right after that there was what are the annual expenses
7 of TPR exclusive of above distributions to Sagi and Ariel Orly.

8 Q Did your brother answer what was the annual expense to
9 TPR when Isaacson & Company posed the question to him?

10 A Again, his answers were really convoluted and --

11 Q How about, was there a discussion about the amount of
12 lawsuits that TPR was involved with as either a plaintiff or a
13 defendant?

14 A Were there discussions?

15 Q Yes?

16 A Yes.

17 Q After that was there a discussion about potentially
18 buying out your interests?

19 A Yes.

20 Q And looking at exhibit 234 does it refresh your
21 recollection, specifically, about what you asked of your
22 brother?

23 A Yes.

24 Q What was asked?

25 A Was TPR, meaning Sagi, consider buying out Orly's
26 interest in TPR. -- Or D&K now giving proper discounts to the

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 D&K note and credit for the losses.

3 THE COURT: Well --

4 MR. HERSCHMANN: Those were the subject matters
5 that were discussed.

6 THE COURT: She is reading from it, though.

7 Q Now --

8 THE COURT: You're kind of abusing it now. She
9 cannot read from it.

10 Q All right.

11 So, the document is not in evidence, so you cannot read
12 from it. You can only look at it to refresh your recollection
13 and then answer the question. So.

14 THE COURT: And if you cannot answer the question,
15 then you cannot answer the question.

16 Q Now, was there a discussion about capital contributions
17 made to White Box?

18 A Yes.

19 Q After that do you recall what was discussed about TPR
20 and its relationship to White Box?

21 A Yes.

22 Q And do you recall at some point asking could you have
23 control of the tax filings of White Box?

24 A Yes.

25 Q Now, did you then move on to discuss your trustees and
26 administration of your trust?

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2 A Yes.

3 Q Who were the trustees back in 2007?

4 A It was Lea Fang.

5 Q Did you discuss wanting someone else to become the
6 trustee of your trust?

7 A Yes.

8 MR. DELLAPORTAS: Objection, relevance.

9 THE COURT: Sustained.

10 Q In the course of this meeting was the agenda dealing
11 with your parents' divorce?

12 A No.

13 Q If you look at the agenda does it refresh your
14 recollection as to whether or not you had raised TRI or had
15 intended to raise TRI in any way?

16 A Does it refresh?

17 Q Yes?

18 A Yes, it does.

19 Q And is TRI something that was on your agenda to cover?

20 A No.

21 Q Now, did you then cover the Canadian ventures?

22 A Yes.

23 Q And do you recall, approximately, when you learned
24 about Riverside related entities?

25 A It was some time prior in '07, prior to this meeting.

26 Q And when you say some time prior to '07, was that in

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 relationship with your trying to get a better understanding of
3 finances?

4 A Yes.

5 Q And prior to having this meeting in November of 2007
6 had you met personally with Isaacson and Company
7 representatives?

8 A Before this meeting?

9 Q Yes?

10 A Yes.

11 Q If you go now to the issues, let's focus now on the
12 Canadian ventures.

13 Do you recall specifically what you first or what was
14 first asked of your brother in the November 8, 2007 meeting
15 regarding the Canadian ventures?

16 A Without -- Without looking at it? No.

17 Q Okay. Looking at exhibit 234 can you tell us if that
18 refreshes your recollection as to what was, what was the first
19 thing that you discussed in relationship to the Canadian
20 ventures?

21 A Yes.

22 Q What was the first thing that was discussed?

23 THE COURT: Without reading from this.

24 Q Without reading?

25 A What did I sell to my brother?

26 Q Was that a question that the representatives of

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2 Isaacson & Company asked your brother even in November of 2007?

3 MR. DELLAPORTAS: Objection, hearsay.

4 THE COURT: Sustained.

5 Q How did your brother respond to the question of what
6 you had sold to him?

7 A To that particular question, I don't remember what his
8 response was.

9 Q Without looking at the agenda do you recall what was
10 discussed in connection with your brother about it?

11 THE COURT: About?

12 Q About the Canadian ventures?

13 THE COURT: Okay the Canadian ventures.

14 Q Yes?

15 A I mean, I have a specific --

16 Q Tell us what you recall being discussed about the
17 Canadian ventures, of the transfer. And then we can get into
18 the specifics. Tell us generally first what you recall?

19 A About the Canadian ventures what was discussed?

20 Q Yes?

21 A Specifically, I specifically asked my brother if we
22 could now transfer back my shares to me like he said he would
23 do. And I specifically remember my brother looking at me and
24 laughing and said, I don't know why you would want to do that,
25 it is valueless.

26 Q Did you believe him when he said that?

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2 A Did I believe what, that it was valueless?

3 Q Yes?

4 A What I believed is that, is that my brother tricked me.

5 Q And after that conversation did you still try to get
6 more information about the Canadian ventures from your brother
7 in that meeting?

8 A I don't remember what happened specifically right after
9 that. I know there was other, there was more conversation about
10 it. But, I cannot tell you specifically.

11 Q Looking at exhibit 234 did you have a discussion to
12 refresh your recollection specifically about the dollar values?

13 A Yes.

14 Q Okay. And does exhibit 234 refresh your recollection?

15 A Yes.

16 Q And what do you recall about discussing with your
17 brother in that meeting dealing with the valuations?

18 A That I had, I had sold my interest to him for 100,000
19 when I bought it for 150.

20 Q And then do you recall any discussions about the
21 valuations of the businesses currently?

22 A I am sorry, what was the question?

23 Q Could we read it back, please?

24 THE COURT: Yes, please.

25 (Record read)

26 Q I meant, generally. I mean the Canadian business?

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann

2 A Yes.

3 Q Did your brother in the course of that meeting provide
4 you with any financial information as to where the money had
5 gone from the Canadian ventures?

6 A No.

7 Q Let me show you what you has been marked as exhibit
8 266-71, which is admitted into evidence.

9 And do you see on the bottom portion of the exhibit
10 266-71 that there is a reference that the White Paper -- I am
11 sorry, that the White Box papers were supposed to transfer to
12 Jonah from Bill Fischer and then Jonah can be reached at (212)
13 758-0000.

14 Do you see that ?

15 A Yes.

16 Q Does that refresh your recollection as to who were the
17 accountants for White Box in 2007?

18 A Yes.

19 Q Is that Jonah Gayer and Associates?

20 A I mean, it was supposed to be, it wasn't.

21 Q Do you know at some point whether Gayer and Associates
22 became the accountants for White Box? And I'm focused on the
23 2007 time period.

24 A I don't know that it ever actually switched to Jonah
25 Gayer.

26 Q Now, going back to the meeting in November, 2007, do

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1 O. Genger - by Plaintiff - Direct/by Mr. Herschmann
2 you recall that at the conclusion of the agenda there was an
3 over all subject matter that you wanted to address with your
4 brother?

5 A Yes.

6 (Continued on the next page)

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2 Q And what was the general tenure for what you were
3 looking to get from your brother in the November 2007 meeting?

4 A Information. Information about my finances.

5 Q And did you get information that was satisfactory to
6 you from your brother in that meeting?

7 A No.

8 Q Let me show you what's been previously received in
9 evidence as Exhibit 230.

10 MR. HERSCHMANN: Again, I'm providing an extra
11 copy to defense counsel.

12 (Handing to defense counsel.)

13 (Handing to witness.)

14 (Handing to the Court.)

15 Q Do you recall that after the meeting Isaacson &
16 Associates sent a letter to your brother?

17 THE COURT: Yeah, this is very leading.

18 MR. HERSCHMANN: I'm sorry?

19 THE COURT: Ask a question.

20 MR. HERSCHMANN: I'm trying to lay a foundation
21 for the exhibit.

22 THE COURT: It's too leading.

23 Q First, have you seen Exhibit 230 beforehand?

24 A Yes.

25 Q Did you have discussions with Isaacson & Associates
26 before Exhibit 230 was sent to your brother?

SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement and release (this "Agreement") is entered into as of June 16, 2013, by and between Arie Genger and Orly Genger (in her individual capacity and in her capacity as beneficiary of the Orly Genger 1993 Trust), Arnold Broser, David Broser, (in their individual capacity and on behalf of all entities managed, owned or controlled in any way by Arnold Broser or David Broser and which are in any way related to the subject matter hereof ("Broser Entities" and collectively with Arie Genger and Orly Genger in all capacities referenced above, the "AG Group"), and TR Investors, LLC ("TR Investors"), Glenclova Investment Co. ("Glenclova"), New TR Equity I, LLC ("New TR I"), New TR Equity II, LLC ("New TR II" and together with TR Investors, Glenclova and New TR I, the "Trump Entities"), Trans-Resources, LLC (the successor to Trans-Resources, Inc. and together with its predecessor entities referred to herein as, "Trans-Resources"), Jules Trump, Eddie Trump and Mark Hirsch (collectively, with the Trump Entities and Trans-Resources, the "Trump Group"). The members of the AG Group and the Trump Group are each referred to herein individually as a "Party" and together as the "Parties".

WHEREAS, in March 2001, TR Investors, Glenclova, Trans-Resources and TPR Investment Associates, Inc. ("TPR") entered into a stockholders agreement with respect the common stock of Trans-Resources (the "Stockholders Agreement");

WHEREAS, since August 2008, Arie Genger, Orly Genger, the Trump Group and others have been engaged in various litigations (described below) concerning the ownership and control of Trans-Resources; and

WHEREAS, the Parties wish to resolve all issues, disputes and disagreements between them, including but not limited to the issue of ownership of all Trans-Resources shares;

NOW, THEREFORE, in consideration of the promises and representations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The above recitals are incorporated into and made a part of this Agreement and are binding on all Parties hereto.

2. **Initial Consideration from the Trump Group.** Upon dismissal with prejudice of the claims, counterclaims, cross-claims, third-party claims, issues and matters as provided in Paragraph 4 below, the Trump Group shall promptly:

(a) release all claims they may have to the (i) \$7,428,994.00 plus interest held by Skadden, Arps, Slate, Meagher & Flom LLP as escrow agent (the "Skadden Escrow") and (ii) \$10,314,005.00 plus interest held by with Pedowitz & Meister as escrow agent (the "P&M Escrow");

(b) pay to Wachtel, Masyr & Missry, LLP as attorneys for the AG Group ("Wachtel") an amount in cash equal to \$35,000,000.00 minus (i) the amount held in the Skadden Escrow, and (ii) the amount held in the P&M Escrow.

3. **Further Consideration from the Trump Group.** Trans-Resources on behalf of the Trump Group shall pay: (i) \$7,500,000 to Wachtel on the third anniversary of the Effective Date (defined below), and (ii) \$7,500,000 to Wachtel 364 days following the third anniversary of the Effective Date. The payments provided under this paragraph shall be (a) subject to the terms and conditions herein and (b) evidenced by two (2) promissory notes that are substantially in the form attached as Exhibit A hereto (the "Notes"). Notwithstanding anything else herein, the maturity of the two \$7,500,000 Notes shall be delayed beyond their due date until the earlier (the "Extended Maturity Date") of (A) such time as all pending claims, cross-claims and counter-claims brought by any of TPR, Sagi Genger, the Sagi Genger 1993 Trust, the Orly Genger 1993 Trust (other than the Orly Trust Action (as defined below)), D&K Limited Partnership, D&K GP LLC, Rochelle Fang, and/or David Parnes (collectively, the "Sagi Group") against any member of the Trump Group have been dismissed with prejudice and the statute of limitations shall have run with respect to any other potential claims of the Sagi Group that might be the subject of the Indemnification provided for by Paragraph 5 below or (B) such time as each member of the Sagi Group shall have provided the Trump Group with a release of the Trump Group Released Parties (as defined below) and covenant not to sue in form and substance that is the same as the AG release and covenant not to sue contained in Paragraph 6(a) below (the "Sagi Group Release").

Subject to the foregoing, the Notes shall become immediately due and payable upon the occurrence of any transaction or series of transactions which shall result in the Trump Group owning or controlling neither (i) a majority of the voting stock of Trans-Resources or its successors or each of its two principal subsidiaries, Haifa Chemicals, Ltd. and Na-Churs Plant

Food Company or their successors, nor (ii) directly or indirectly, a majority of the assets currently owned by Trans-Resources and its subsidiaries; provided, however, that in such event, at the request of the Trump Group, the amounts then payable on the Notes shall be placed in escrow for the duration of their original term or until the Extended Maturity Date (if applicable) under the provisions of an escrow agreement on reasonable terms to be negotiated at such time in good faith between Trans-Resources, the payee and an escrow agent selected by their mutual consent, which shall provide for their release to the Trump Group in payment of Indemnification Amounts, AG Group Release Amounts and Discovery Costs (as such terms are defined below), if any, and payment to the payee of such amounts after reduction for Indemnification Amounts, AG Group Release Amounts and Discovery Costs, if any, upon their original maturity date or the Extended Maturity Date (if applicable). If Trans-Resources is unable to pay the Notes as and when they mature, the Trump Group will be obligated to make payment thereon in an amount equal to the lesser of (x) the outstanding amounts not paid by the obligor thereunder and (y) any amount by which cash payments received by members of the Trump Group (other than Trans-Resources) from Trans-Resources and its subsidiaries since the Effective Date (whether in the form of dividends, distributions, compensation or otherwise) exceeds reasonable compensation for services rendered plus payments for goods, services and assets provided by such persons in amounts that would have been paid for such goods, services and assets in arms' length transactions with unaffiliated third parties; provided, however, that in neither case shall the Trump Group be obligated to pay any amount that exceeds the outstanding amounts not paid by Trans-Resources on the Notes (subject to any Indemnification Amounts, AG Group Release Amounts or Discovery Costs).

4. **Dismissal of Claims with Prejudice.** Within two (2) business days of the Effective Date (defined below), the AG Group and the Trump Group shall take all actions necessary or desirable to: (i) effect the dismissal with prejudice of all claims, counterclaims, cross-claims, third-party claims, issues and matters between them, and to vacate all court orders which restrain, enjoin or in any way limit actions by any members of the Trump Group, in each pending action in which members of the AG Group and the Trump Group are parties (whether or not service of process with respect thereto has been effected), including, without limitation, each of the following pending actions (collectively, the "Litigation"): *Genger v. TR Investors, LLC*, No. 168, 2013 (Del.); *TR Investors, LLC v. Genger*, C.A. No. 6697-CS (Del. Ch.); *Trans-Resources, Inc. v. Genger*, C.A. No. 4391-CS (Del. Ch.) (with respect to Arie Genger only); *TR Investors, LLC, et al. v. Genger*, C.A. No. 3994-CS (Del. Ch.); *Glenclova Investment Co. v. Trans-Resources, Inc., at al.*, No. 08 Civ. 7140 (JFK) (S.D.N.Y.); *Arie Genger and Orly Genger v. Sagi Genger, et al.*, Index No. 651089/2010 (N.Y. Supr.); and (ii) have the New York State Supreme Court enter a definitive non-appealable order declaring that members of the Trump Group own all right, title and interest (beneficially, of record and otherwise) to the shares of Trans-Resources purportedly transferred by TPR in October 2004 to Arie Genger (the "Arie Shares") and to the Orly Genger 1993 Trust (the "Orly Trust Shares"), with the understanding and agreement that should the request for the entry of such an order with respect to the "Orly Trust Shares" be denied or not entered in a reasonably timely fashion, then the AG Group and the Trump Group shall take all action necessary or desirable to have the New York State Supreme Court vacate all court orders which restrain, enjoin or in any way limit actions by the

parties to the pending action captioned *Dalia Genger, as Trustee of the Orly Genger 1993 Trust v. TR Investors, LLC, et al.*, C.A. No. 6906-CS (Del. Ch.) (the "Orly Trust Action"), to prosecute, defend, compromise, settle and otherwise deal with all claims, counterclaims, cross-claims, third-party claims, issues and matters asserted therein; provided, however, that nothing in this Agreement is intended to require or permit the dismissal of any claims, counterclaims, cross-claims, third-party claims, issues and matters, (i) in *Trans-Resources, Inc. v. Genger*, C.A. No. 4391-CS (Del. Ch.) (the "Breach of Fiduciary Duty Case"), as between the Trump Group and Avi Pelossof and/or William Dowd (subject to the exchange of general releases between the members of the Trump Group and William Dowd as contemplated below) and (b) against TPR, the Sagi Genger 1993 Trust, the Orly Genger 1993 Trust, D&K Limited Partnership, D&K GP LLC, Sagi Genger or Dalia Genger. Any member of the AG Group including, without limitation, Orly Genger, who is called to testify in the Litigation or the Orly Trust Action, agrees to testify that he, she (in her individual capacity, ~~on behalf of the Orly Genger 1993 Trust~~ ^{TK} and as beneficiary of the Orly Genger 1993 Trust) or it has waived all claims he, she (in her individual capacity, ~~on behalf of the Orly Genger 1993 Trust~~ ^{TK} and as beneficiary of the Orly Genger 1993 Trust) or it had or may have to ownership (record, beneficial or otherwise) of any shares of Trans-Resources and that he, she (in her individual capacity, ~~on behalf of the Orly Genger 1993 Trust~~ ^{TK} and as beneficiary of the Orly Genger 1993 Trust) or it is opposed to the Orly Genger 1993 Trust seeking any remedy of any kind against any member of the Trump Group. Notwithstanding the foregoing, upon receipt by the Trump Group of a general release in form and substance reasonably satisfactory to it, the Trump Group shall provide the same general

release to William Dowd and cause the dismissal of the Breach of Fiduciary Duty Case as between the Trump Group and him.

5. Indemnification.

(a) Upon closing of this Agreement, each of the members of the AG Group with the exception of Arnold Broser and David Broser and the Broser Entities, jointly and severally, agrees to indemnify and hold harmless (i) each of the members of the Trump Group, and their respective past and present affiliates and direct and indirect subsidiaries, and (ii) each of the past and present agents, representatives, officers, directors, advisors, employees, general partners, limited partners, shareholders, members, predecessors, successors, heirs, executors, administrators and assigns of each person and entity referenced in clause (i), from all reasonable costs, expenses, attorneys' fees of counsel selected by the Trump Group (it being agreed that the Trump Group will cooperate with the AG Group in all reasonable respects to cause the amount of such costs, expenses and its attorneys' fees to be minimized), settlements and/or judgments (whether direct or related to joint and several liability) (the "Indemnification Amounts") incurred as a result of, in connection with, or relating in any way to any (x) claims, counterclaims, cross-claims or third-party claims raised or that could have been raised in the Litigation, and (y) claims that are pending, have been brought, or that may in the future be brought by or on behalf of any of TPR, the Sagi Genger 1993 Trust, the Orly Genger 1993 Trust (other than those claims currently pending in the Orly Trust Action), D&K Limited Partnership, D&K GP LLC, Sagi Genger, David Parnes or Dalia Genger, regardless of whether they were or could have been raised in the Litigation or the Orly Trust Action, relating in any way, whether directly or indirectly, to (A) the Shareholders Agreement entered into by Trans-Resources

shareholders and Trans-Resources on March 30, 2001, (B) the transfer of interests in TPR or the purported transfer of shares of Trans-Resources by TPR in October 2004, (C) any activities or developments relating to or conducted by Trans-Resources or any of its direct or indirect subsidiaries that occurred prior to September 26, 2008, (D) the acquisition by the Trump Group of all interests (record, beneficial or otherwise) of the so called "Arie Shares", "Orly Trust Shares" and the shares of Trans-Resources purportedly transferred by TPR in October 2004 to the Sagi Genger 1993 Trust (the "Sagi Trust Shares") (including, without limitation, the negotiations for the ownership or acquisition of such shares), (E) the control of Trans-Resources or any of its direct or indirect subsidiaries by the Trump Group through its acquisition of the aforementioned shares, (F) records and documents (including but not limited to electronic files) in the possession, custody or control of Trans-Resources or any of its direct or indirect subsidiaries, (G) misrepresentations made or improper acts conducted prior to September 26, 2008 by any officer or director of Trans-Resources, (H) this Agreement, (I) the business or operations of Trans-Resources or any of its direct or indirect subsidiaries conducted prior to September 26, 2008 arising from or in any way related to the conduct of any member of the AG Group, Avi Pelossof or William Dowd, or (J) the conduct of any other individual to the extent Arie Genger is aware, or should have been aware, thereof. Notwithstanding the foregoing, the indemnity provided for above shall not apply to any claims which may be brought subsequent to the Effective Date (and which are entirely unrelated to any claim brought prior to such date) by any of Sagi Genger, the Sagi Genger 1993 Trust or TPR and which arise solely out of actions taken or not taken by members of the Trump Group which actions or inactions no member of the AG Group was aware of or should have been aware of; provided, however, that such claim was

not encouraged or solicited by any member of the AG Group and no member thereof cooperates in asserting, instituting or prosecuting such claim. Notwithstanding anything herein to the contrary, the undertaking of William Wachtel hereunder shall not exceed under any circumstance an amount greater than \$5,000,000.

(b) The Trump Group may request payment or reimbursement of the Indemnification Amounts at any time by providing a written statement or copy of an underlying invoice or expense documentation to any member of the AG Group at the addresses set forth in Paragraph 16 below, and the AG Group shall pay such indemnified expenses in full and in cash within five (5) business days of the date such request is made. The supporting documentation submitted with any payment or reimbursement request hereunder may be redacted as necessary to preserve attorney-client privilege, attorney work product, or confidential information the Trump Group may, in its reasonable determination, need to protect. The Trump Group will provide the AG Group with reasonable notice prior to making any motion or taking any appeal with respect to, or in, any past, present or future action or claim for which the Trump Group is seeking indemnification, and such notice will be accompanied by a non-binding estimate of the legal fees and costs associated with such motion or appeal. The Trump Group authorizes the AG Group and their respective counsel to discuss directly with the Trump Group's appointed counsel the amount and scope of any invoice for which the Trump Group is seeking indemnification. The AG Group in its sole discretion may settle any indemnified claim so long as there is no monetary contribution to be paid by the Trump Group, and the Trump Group is released, in form and substance reasonably satisfactory to it, from any liability relating to any such indemnified

claim. The Trump Group shall not enter into any settlement of any indemnified claim, or discussions with respect thereto, without the express written consent of the AG Group .

(c) With respect to each Indemnification Amount, until such time as it has been paid over to the Trump Group, the members of the AG Group shall remain jointly and severally liable for such Indemnification Amount and, the Trump Group may at its option pursue all legal remedies available to it and/or withhold an amount equal to such unreimbursed Indemnification Amount from any payments by Trans-Resources to be made pursuant to the Notes.

6. **Releases.**

(a) **The AG Group Release.** Effective on the Effective Date, each of the members of the AG Group, for itself, himself or herself, and in all capacities, and on behalf of its (and its respective affiliates' and direct and indirect subsidiaries'), his or her respective agents, representatives, officers, directors, advisors, employees, general partners, limited partners, shareholders, members, subsidiaries and affiliates, and each of their respective predecessors, successors, heirs, executors, administrators and assigns, and any other persons or entities acting in concert with any of them including, without limitation, any member of the Sagi Group which he, she or it shall at any time directly or indirectly control or be deemed authorized to act on behalf of (individually, an "AG Group Releasing Party" and collectively, the "AG Group Releasing Parties"): (i) fully, finally, irrevocably and unconditionally waives, releases and discharges each of the members of the Trump Group and its (and its respective past and present affiliates' and direct and indirect subsidiaries'), his or her respective past and present agents

(including Skadden, Arps, Slate, Meagher & Flom LLP in any capacity, including as Escrow Agent for the Skadden Escrow or for any escrow in which it held, holds, or may hold, any dividends or distributions from Trans-Resources), representatives, officers, directors, advisors, employees, general partners, limited partners, shareholders, members, subsidiaries and affiliates, and each of their respective predecessors, successors, heirs, executors, administrators and assigns (collectively, the "Trump Group Released Parties"), from any and all claims, counterclaims, demands, proceedings, actions, causes of action, orders, obligations, damages, debts, costs, expenses and other liabilities whatsoever and however arising, whether known or unknown, past, present or future, suspected or unsuspected, contingent or actual, both at law and in equity, including without limitation, claims for fraud or fraud in the inducement (collectively, "Claims"), which such AG Group Releasing Party now has, has ever had or may hereafter claim to have against any Trump Group Released Party or its, his or her assets, liabilities or operations from the beginning of the world through the Effective Date (individually, an "AG Group Released Claim" and collectively, the "AG Group Released Claims"); and (ii) agrees not to assert, institute or prosecute, or encourage, solicit or cooperate with any other person or entity in asserting, instituting or prosecuting, any proceeding against any of the Trump Group Released Parties in any jurisdiction (domestic or foreign, including, without limitation, the State of Israel) with respect to any AG Group Released Claim or any other Claim relating in any way, directly or indirectly, to Trans-Resources or any of its direct or indirect subsidiaries, the ownership or acquisition of Trans-Resources shares (including any dividends or distributions relating thereto or any escrow in which such dividends or distributions may currently be or in the past have been held), the Litigation, the Orly Trust Action, control of Trans-Resources or any of its direct or